

think of any. As for the Church, 'twas certain, Persecution was generally the happiest means of propagating that ; she then grew fastest when prun'd most : then of the best complexion and most healthy when fainting through loss of blood. As to the Laity, in all their several stations and estates they had so much perverted the healthful dispensations of Judgement, that it was most improbable they should make any tolerable use of Mercy. And lastly, in reference to himself, he resolv'd (though sure on weaker grounds) Affliction most conducive. During the current of that Tyranny which for so many years we all groan'd under, he kept a constant equable serenity and unthoughtfulness in outward accidents : but the approach-

proaching Change gave him somewhat of pensive recollection, insomuch that discoursing of occurrents, he broke forth into these words, *I must confess I never saw that time in all my life wherein I could so chearfully say my Nunc dimittis as now.* Indeed I do dread Prosperity, I do really dread it. For the little good I am now able to doe, I can doe it with deliberation and advice: but if it please God I should live and be call'd to any higher Office in the Church, I must then doe many things in a hurry, and shall not have time to consult with others, and I sufficiently apprehend the danger of relying on my own Judgment. Which words he spake with the greatest concernment of earnest melting passion as is imaginable. Accordingly

dingly it pleas'd Almighty God to deal; and having granted to his servant the satisfaction of a full return and gracious answer to his Prayer in the then-every-day-expected Reception of his Sacred *Majesty*, not to deny his other great request of not sharing a temporary advantage from it: but as his merits were far beyond those transitory ensnaring retributions, to remove him from them to those solid and unmixt Rewards, which could be nothing else then such, and would be such for ever.

But this sad part of our relation requiring to it self a fresh unwearied sorrow, and the Saint-like manner of this Excellent person's passage from the World

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being as exemplary and conducing to the uses of Survivers as the notice of his Life; we shall allow it a distinct apartment, and once again break off the thred of our discourse, for to resume it in its proper unentangled Clue.

AT the opening of the year 1660, when every thing visibly tended to the reduction of his Sacred *Majestie*, and all persons in their several stations began to make way and prepare for it, the good *Doctor* was by the Fathers of the Church desir'd to repair to *London*, there to assist in the great Work of the composure of Breaches in the Church: Which Summons as he resolv'd
unfit

unfit either to dispute or disobey, so could he not without much violence to his inclinations submit unto. But finding it his Duty, he diverted all the uneasiness of antipathy and averfation into a deliberate preparation of himself for this new Theatre of affairs on which he was to enter. Where his first care was to fortify his minde against the usual temptations of Business, Place, and Power. And to this purpose, besides his earnest Prayers to God for his assistance, and disposal of him entirely to his Glory, and a diligent survey of all his inclinations, and therein those which were his more open and less defensible parts, he farther call'd in and solemnly adjur'd that

Friend of his with whom he had then the nearest opportunity of commerce, to study and examine the last ten years of his life, and with the justice due to a Christian Friendship to observe his failances of all kindes, and shew them to him : which being accordingly attempted, the product, after a diligent inquest, onely proving the representation of such defects which might have past for Vertue in another person; his next prospect was abroad, what severall wayes he might doe good unto the publick : and knowing that the Diocese of *Worcester* was by the favour of his *Majesty* design'd his Charge, he thought of severall opportunityes of Charity unto that place, and
among

among others particularly cast in his minde for the repair of the Cathedral Church, and had lay'd the foundation of a considerable advance unto that work. Which early care is here mention'd as an instance of his inflam'd desire of doing good, and singular zeal to the House of *God*, and the restoring of a decent Worship in a like decent place: For otherwise it was far from his Custome to look forward into future events, but still to attend and follow after Providence, and let every day bear its own Evil. And now considering that the Nation was under its great *Crisis* and most hopeful method of its Cure, which yet if palliate and imperfect would onely make

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way to more fatal Sickness, he fell to his Devotions on that behalf, and made those two excellent Prayers which were publish'd immediately before his Death, as they had been made immediately before his Sickness, and were almost the very last thing he wrote.

Being in this state of minde, fully prepar'd for that new course of life, which had nothing to recommend it to his tast but its unpleasantness, (the best allecative unto him) he expected hourly the peremptory mandate which was to call him forth of his belov'd Retirements.

But in the instant more importunate, though infinitely more welcome, Summons engag'd him
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on his last Journey: For on the 4th of *April* he was seiz'd by a sharp fit of the *Stone*, with those symptoms that are usual in such cases; which yet upon the voidance of a Stone ceas'd for that time. However on the 8th of the same moneth it return'd again with greater violence: and though after two dayes the pain decreas'd, the suppression of Urine yet continued, with frequent Vomitings, and a distention of the whole body, and likewise shortness of breath, upon any little motion. When as if he had by some instinct a certain knowledge of the issue of his Sickness, he almost at its first approach conceiv'd himself in hazard: and whereas at other times, when he saw his

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friends

friends about him fearful, he was us'd to reply chearfully, *that he was not dying yet; now in the whole current of his disease, he never said any thing to avert suspicion, but addrest unto its cure, telling his friends with whom he was, that he should leave them in God's hands, who could supply abundantly all the assistance they could either expect or desire from him, and who would so provide, that they should not find his removal any loss.* And when he observ'd one of them with some earnestness pray for his health and continuance, he with tender passion replied, *I observe your zeal spends it self all in that one petition for my recovery; in the interim you have no care of me in my greatest Interest, which is, that I may be perfectly fitted*

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ted for my Change when God shall call me: I pray let some of your fervour be employ'd that way. And being prest to make it his own request to God to be continued longer in the World, to the service of the Church, he immediately began a solemn Prayer, which contain'd first a very humble and melting acknowledgement of sin, and a most earnest intercession for Mercy and forgiveness through the Merits of his Saviour: Next resigning himself entirely into his Maker's hands, he begg'd that if the Divine Wisedome intended him for Death, he might have a due preparation for it; but if his Life might be in any degree useful to the Church, even to one single Soul, he then besought Almighty God to continue him, and by his
grace

grace enable him to employ that Life he so vouchsafed industriously and successfully. After this he did with great affection intercede for this Church and Nation, and with particular vigor and enforcement pray'd for sincere performance of Christian duty now so much decayed, to the equal supplanting and scandal of that holy Calling; that those who profess'd that Faith might live according to the Rules of it, and to the Form of Godlineſſ ſuperadde the Power. This with ſome repetitions and more tears he purſued, and at laſt clos'd all in a Prayer for the ſeveral concerns of the Family where he was. With this he frequently bleſt God for ſo far indulging to his infirmity, as to make his diſeaſe ſo painleſs to him; withall to ſend
it

it to him before he took his journey, whereas it might have taken him in the way, or at his Inn, with far greater disadvantages.

Nor did he in this Exigence desist from the exercise of his accustomed Candor and Sweetness, whereby he was us'd to entertain the addressees of the greatest Strangers. For two Scholars coming at this time to see him, when they having sent up their names, it appear'd they were such as he had no acquaintance with, though they that were about the *Doëtor*, considering his illness, proposed that a civil excuse might be made, and the Visitants be so dismiss'd ; he resisted the advice with greatest earnestness, saying, I will by no means have them sent away,
for

for I know not how much they may be concern'd in the Errand they come about, and gave order they should be brought up: and when upon trial it appear'd that a Complement was the whole affair, yet the good *Doctor* seem'd much satisfied that he had not disappointed that unseasonable kindness.

Likewise his own necessities, however pressing, diverted not his concernments for those of others. It so happen'd that a neighbour-*Lady* languishing under a long weakness, he took care that the Church-office for the sick should be dayly said in her behalf: and though at the beginning of the *Doctor's* illness the Chaplain made no other variation,

riation, then to change the singular into the plural, yet when his danger encreas'd, he then thought fit to pray peculiarly for him; which the good *Doctor* would by no means admit, but said, *O no, poor Soul, let not me be the cause of excluding her*; and accordingly had those Prayers continued in the more comprehensive latitude. And indeed those Offices which had a publick character upon them he peculiarly valued. For as to the forms of Devotion appropriate to his Extremity, he took care they should not exclude the publick ones, but still gave these a constant place: and when in his sharp agonies his friends betook themselves to their extemporary ejaculations, he
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compos'd those irregularities by saying, *Let us call on God in the voice of his Church.*

And in seasons of this kinde whereas the making of a Will is generally an uneasy task, as being at once a double parting with the World; to him it was in all respects agreeable and welcome. For having bequeath'd several Legacies to his relatives and friends, and left the remainder of his Estate to the disposal of his intimate and approved friend D^r *Henchman*, now L^d B^p of *Salisbury*, as if recovered from the worst part of his disease, the necessity of reflecting upon Secular affairs, he became strangely chearful, and overlook'd the encroaching importunate tyranny of Sicknes.

On

On the 20th of *April*, being *Good-friday*, he solemnly receiv'd the Sacrament; and again on the 22th of *April*, which then was *Easter-day*. At which time when the number of Communicants was too great to have place in his Bed-chamber, and the whole Office was over-long for him to goe through with, it was ordered, that the Service being perform'd in the usual apartment, a competent number should afterwards come up and communicate with him: Which though he allow'd as most fitting, yet he did so with grief and trouble, breaking out into this passionate complaint, *Alas! must I be excommunicated?* To be absent from any part of publick Worship he thus

thus deeply resented: So far was he from their opinion (and they would be thought Godly too) who in their most healthful leisurable dayes make this not their penance, but election and choice.

Amidst his weakness and indisposition of all parts, in the act of celebration his Devotion only was not faint or sick, but most intent and vigorous: yet equall'd by his infinite Humility, which discover'd it self as in his deportment, so particularly in that his pathological ejaculation, which brake forth at the hearing of those words of the Apostle, *Jesus Christ came into the world to save sinners*; unto which he rejoyn'd, in an accent that neither intended a complement to
God.

God nor men to either of which he was not under a temptation, *Of whom I am the chief.*

The Exuberance of this Humility appear'd in all other occasions of instance: particularly about this time a Letter being sent unto him, in wth, among many expressions of great value, there was added an intimation, *That there was now hope the days were come whē his desert should be considered, & himself imploied in the Government as well as the Instruction of the Church;* at this he was hugely discomposed, & expressed a grief & anguish beyond that his Sickness in any period, however sharp, had extorted from him.

But now through the long suppression of Urine the blood grown thin and serous, withall made eager and tumultuous by

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the mixture of heterogeneous parts, the Excellent *Doctor* fell into a violent bleeding at the Nose; at which the by-standers being in astonishment, he chearfully admonish'd to lay aside impatience in his behalf, and to wait God's leisure, whose seasons were still the best: with all thankfully acknowledg'd God's mercy in the dispensation, alledging, that to bleed to death was one of the most desireable passages out of this World.

And truly he very justly made this observation; for it pleas'd the Divine Providence strangely to balance the symptoms of the *Doctor's* Disease to his advantage: for the sharp paines of the Stone were allay'd by that heaviness of sense which the recuilment of
ferous

serous moisture into the habit of the body and insertions of the Nerves occasion'd ; and when that oppression endanger'd a Lethargick or Apoplectick torpour, he was retain'd from that by the flux of blood. Which several accidents interchangeably succeeded one the other, insomuch that in this whole time of Sicknes he neither had long violence of torment, nor diminution of his intellectual faculties. And here this violent hæmorrhage of which we now speak being of its self even miraculously stopt, when all applications were ineffectual, a drowsiness succeeding, which happened at the time of Prayers, though he perfectly attended, and returned to every response amidst

his importunate infirmity, he very sadly resented it, saying, *Alas ! this is all the return I shall make to this mercy, to sleep at Prayers.*

When he was in pain he often pray'd for Patience, and while he did so, evidenc'd that his Prayer was heard ; for he exercis'd not onely that, but Thankfulness too, in his greatest extremity crying out, *Blessed be God, blessed be God.*

Nor did he, according to the usual method, inflict his Sicknes upon those about him, by peevishness disquieting his attendants ; but was pleas'd with every thing that was done, and liking every thing that was brought, condescending to all proposals, and obeying with all readiness every advice of his Physicians. Nor
was

was it wonder he should so return unto the endeavours of his Friends, who had tender kindness for his Enemies, even the most inveterate and bloody. When the Defeat of *Lambert* and his Party, the last effort of gasping Treason in this Nation before its blest return unto Obedience, was told him, his onely triumph was that of his Charity, saying with tears in his eyes, *Poor Souls! I beseech God forgive them.* So habitual was Pity and Compassion to his Soul, that all representations concentrated there: Vertue had still his Prayers, because he lov'd it; and Vice enjoy'd them too, because it wanted them.

In his own greatest desolations he administer'd reliefs to those

P 3 about

about him, mixing Advices with his Prayers, and twisting the tenderness of a Friend to that of the Christian, he then dispens'd his best of Legacies, his Blessings; most passionately exhorting the young growing hopes of the Family, whose first innocence and bashful shame of doing ill he above all things labour'd to have preserv'd, *to be just to the advantage of their education, and maintain inviolate their first baptismal Vows:* then more generally commended unto all the great advantage of *mutual friendly Admonitions.* On which occasion when the good Lady ask'd him what more special thing he would recommend unto Her for her whole life, he briefly replyed, *Uniform Obedience:*
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Whereby (if we may take a Comment from himself at other times) he meant not onely a sincere reception of Duty as such, because commanded, and not because 'tis this or that, pleasant or honourable, or perchance cheap or easie duty; but withall the very condition of Obeying, the lot of not being to chuse for ones self, the being determin'd in all proposals by humane or Divine Command, and where those left at large, by the guidance of God's Providence, or the assistance of a Friend.

But amidst these most Christian divertisements, these happiest *anodynes* of Sicknes, the 25 of *April* fatally drew on, wherein his flux of Blood breaking forth

again with greater violence then it had done before, was not to be stopp'd by outward applications, nor the revulsives of any kind, not of its own, the opening of a Vein, first in the arm, and after in the foot; till at last the fountain being exhausted, the torrent ceas'd its course, and indeed that Vital one which its regular motion kept on foot: for the good *Doctor* leaving off to bleed about three of the clock in the afternoon, became very weak and dis-spirited, and cold in the extreme parts, had strength onely continued to persevere in his Devotions, which he did unto the last moment of his life, a few minutes before his Death breathing out those words which best became

came

came his Christian Life, *Lord,*
make hast.

And so upon that very day on which the *Parliament* conven'd, which lay'd the foundation of our Release and Liberty, and brought at once this Nations return from its Captivity, and its Gracious Sovereign Prince, this great Champion of Religion and Pattern of all Vertue, as it reserv'd for Masteries and Combats of exigence and hazard, for Persecution and Sufferings, was taken hence, and by his loss repress the overflowing and extravagance of those joyes that waited the reception of *His Sacred Majesty.*

'Twill be below the greatness of the Person as well as of this Loss, to celebrate his Death in

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womanish complaints, or indeed by any verbal applications; his Worth is not to be describ'd by any Words besides his own, nor can any thing beseem his Memory but what is Sacred and Eternal as those Writings are. May his just Fame from them and from his Vertue be precious to succeeding times, grow up and flourish still: and when that characters engrav'd in Brasse shall disappear, as if they had been writ in Water, when Elogies committed to the trust of Marble shall be illegible as whisper'd accents, when *Pyramids* dissolv'd in dust shall want themselves a monument to evidence that they were once so much as ruine; let that remain a known and classick History

History describing him in his full pourtraiture among the best of Subjects, of Friends, of Scholars, and of Men.

The *dead body* being opened (which here is mention'd, for that the Reader cannot want the curiosity to desire to know every thing that concern'd this great Person) the principal and Vital parts appear'd sound; onely the right Kidney, or rather its remainder, which exceeded not the bigness of an Egge, was hard and knotty, and in its cavity besides several little ones, a large Stone of the figure of an Almond, though much bigger, whose lesser end was faln into the Ureter, and as a stopple clos'd it up; so that 'tis probable that Kidney had
for

for diverse years been in a manner useless. The other Kidney was swoln beyond the natural proportion, otherwise not much decayed; but within the *Ureter* four fingers breadth a round white Stone was lodg'd, which was so fastned in the part, that the Physician with his Probe could not stir it, and was fain at last to cut it out: and so exactly it stop'd the passage, that upon the dissection the water before enclos'd gush'd forth in great abundance: from whence it appear'd perfectly impossible for Art to have ennobled it self in the preservation of this great Person; as it was also manifest that nothing but the consequences of his indefatigable Study took him from us, in the perfection
and

and maturity, the 55th year of his Life.

On the morrow in the evening, 26 day of the same moneth, he was, according to his desire, without Ostentation or Pomp, though with all becoming Decency, buried at the Neighbour-Church of *Hampton*, with the whole Office and usual Rites of the Church of *England*, several of the Gentry and Clergy of the County, and affectionate multitudes of persons of less quality, attending on his Obsequies, the Clergy with ambition offering themselves to bear him on their Shoulders; which accordingly they did, and lay'd that Sacred burthen in the Burial-place of the generous Family which with such friendship had enter-

entertain'd him when alive: where now he rests in Peace, and full assurance of a glorious Resurrection.

Having thus given a faithful, though imperfect, draught of this *excellent Person*, whose Vertues are so far from imitation by practice, that they exercise and strain the comprehension of words ; and having shew'd how much he has merited of this Nation in its most pressing Exigents, both by his Writings and by his Example, and perchance above both these by his unwearied intercession in Devotion ; it may possibly be neither useless nor unacceptable to offer a request unto the *Reader* in his behalf, and shew him an
Expe-

Expedient whereby he may pay his debt of gratitude, and eminently oblige this *holy Saint* though now with God.

'Tis this, to adde unto his account in the day of Retribution by taking benefit by his Performances : and as he being dead yet speaks, so let him perswade likewise,

That the *Covetous Reader* would now at his request put off his sordid Vice, and take courage to be Liberal, assur'd by his Example, that if in the worst of times Profuseness could make rich, Charity shall never bring to beggery.

That the *Proud* opinionated person on the same terms would in civility to him descend from his
his

his fond heights, instructed here that lowly Meekness shall compass great respects, and in stead of Hate or Flattery be waited on with Love and Veneration.

That the *Debauch'd* or *Idle* would leave upon this score his lewd unwarrantable joys, convinc'd that strict and rugged Vertue made an age of Sun-shine, a life of constant Smiles, amidst the dreadfullest Tempests; taught the Gout, the Stone, the Cramp, the Colick, to be treatable Companions, and made it eligible to live in bad times and dye in flourishing.

That the *Angry* man, who calls Passion at least Justice, possibly Zeal and Duty, would for his sake assume a different temper,
believe

believe that Arguments may be answer'd by saying Reason, Calumnies by saying No, and Railings by saying nothing.

The *Coward* and *Disloyal*, that durst not own in words, much less by service and relief, his Prince, that complemented his Apostasy and Treason by the soft terms of changing an Interest, will from hence learn that the surest way to safety is to have but one Interest, and that espous'd so firmly as never to be chang'd; since such a constancy was that which a *Cromwell* durst not persecute.

That the *employ'd* in *Business* would from hence dismiss their fears of regular Piety, their Suspicion that Devotion would hinder

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all

all dispatch and manage of affairs; since it appear'd, his constant Office (like the Prayer of *Josuah*, which made the Sun stand still) seem'd to have render'd unto him each day as long as two.

That the *Ambitious* person, especially the Ecclesiastick, would think employment and high place a Stewardship, that renders debtors both to God and man; a residence at once of constant labour & attendance too; a precipice that equally exposes both to envie and to ruine: and consequently to be that which should become our greatest fear and terror, but at no hand our Choice: since it was that which this heroick constancy was not ashamed to own a dread of, and whose

whose appearance did render Death its self relief and rescue.

Lastly, that the *narrow Self-designing* person, who understands no kindness but advantage; the *Sensual*, that knows no love but lust; the *Intemperate* that owns no companion but Drink; may all at once from him reform their brutish Errours: since he has made it evident, that a Friend does fully satisfy these distant and importunate desires, being as the most innocent and certainly ingenuous entertainment, so besides that the highest mirth, the greatest interest, and surest pleasure in the World.

They that had the happiness of a personal acquaintance with this best of men, this Saint, who

seems in our decayes of ancient Vertue lent us by special Providence even for this end and purpose, that we might not disbelieve the faith of History delivering the Excellency of primitive Christians; know with what thirst and eagerness of Soul he sought the spiritual advantage of any single man how mean soever, with what enjoyment he beheld the recovery of any such from an ill course and habit. And whatever apprehensions other men may have, they will be easily induc'd to think, that if blessed Spirits have commerce with Earth, (as surely we have reason to believe it somewhat more then possible) they, I say, will resolve it a connatural and highly-

highly-agreeable accession unto his fruitions, that when there is joy in the presence of the Angels of God for a sinner that repents, he may be an immediate accessory to that blessed triumph, and be concern'd beyond the rate of a bare spectator.

Persuasions to Piety nowadays are usually in scorn call'd Preaching: but 'tis to be hoped that this, how contemptible an Office soever it be grown, will be no indecency in this instance; that 'twill not be absurd if his History, who deservedly was reckon'd among the best of Preachers, whose Life was the best of Sermons, should bear a correspondence to its Subject, and profestly close with an applicati-

on : That it adjures all persons to be what they promis'd God Almighty they would be in their Baptismal Vows, what they see the glorious Saints & Martyrs & Confessors, and in particular this holy man has been before them ; be what is most honorable, most easy & advantageous to be at present ; and, in a word, to render themselves such as they desire to be upon their death-beds, before they leave the World , and then would be for ever.

Which blest atchievement as it was the great designe of the Excellent *Doctor's* both Words and Writings, his Thoughts and Actions, is also (besides the payment of a debt to Friendship and to Vertue) the onely aim of this imperfect,

perfect, but yet affectionate and well-meant, account: And may Almighty *God* by the assistance of his Grace give all of these this their most earnestly-desired effect and issue.

THE END.

THE HANDBOOK

OF THE
AMERICAN
NATURAL
HISTORY
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OF
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Testimony and Warning

Given forth in the love of Truth, and is for
the *Governour, Magistrates & People* inhabiting on the
Island of *Barbadoes*; which is a Call to turn to the Lord.

O Ye Magistrates and Inhabitants of the Island of *Barbadoes*, O consider how often the God of Heaven hath visited you, sending his faithful Servants and Messengers amongst you, to call to Repentance and Amendment of Life, and to warn you, that so you might have escaped the many Judgments which his Hand hath brought upon you divers times both by Fires often, and Pestilence, and Storms, all which happened to your great Dammage in outward things; also many have been taken away by sudden Death, as ye well know, to the Sorrow of some, and amazement for the present, though indeed very soon forgotten again, as many have been Eye-Witnesses thereof: For when the last great Fire was in Town, I being in one House near adjoyning, where were many of the chief Women of the Town, who were there to escape the Danger, and looking on the Fire, and seeing it like to take hold on their Houses, great Terror was then in their Hearts, who then in the Time of Affliction remembered to call upon God, where I heard some of them say, *Lord have Mercy, and spare us this time, and surely we will Repent and Amend our Lives*: whereas ye knew that ye did lye to God; for ye still went on in the same Excess after, and unto this day; so cut of your own Mouthes you will be condemned; for you were then spared alive, and many of your Houses did escape the Fire. And now you are affraid of Wars; for indeed the Sword it is already furnished for a Slaughter; all Trees that bring not forth Fruit

to God must be cut down by the Sword of his Mouth. Neither can any truly say, *that God is unrighteous in his dealings towards the Sons of men*, because that his Visitations have been many to turn People from the Wayes which are not good, that so he might have Mercy on all, & abundantly pardon those who through true Repentance and Amendment of Life do hearken unto his Reproofs of Instruction, which is the Way of Life, as saith the Scripture. So now consider how his Messengers have been slighted among you, and sent away empty, and some ye Imprison'd, who came from far to seek for Fruits amongst you, Fruits of Mercy, that so God might shew Mercy in the Day of Visitation, which surely will come on all that dwell on the Earth. Some also who have been long Inhabitants amongst you, my self and another Woman, we were moved to go to your House of Worship, to call upon you to Repentance, that so amongst God's faithful Ones ye might be made Partakers of like precious Mercies in this day of Lovingkindness, which is known to those who are given up with the whole Mind and whole Heart to follow the Lamb whithersoever he goes: And indeed, in the shedding abroad of God's Love in our Hearts it was in which I with the other Friend came amongst you, but ye know ye made a Mock at it; O therefore take heed that God, who is just in all his Wayes and righteous in all his Judgments, do not laugh at your Calamity, and mock when your Fear cometh, yea, whenas your Fear cometh like a Whirlwind, that none can stop it, then shall you call, but he will not hear, and cry, but he will not answer: And so though we did not break any Law (for it was not charged against us at your Court) yet were we committed to Prison, and were haled along by the *Bell-man* of the Town, who at first handled us roughly; but we told him, *We should not resist him, nor seek to go from him, seeing he was commanded to carry us*: thus hath God's Servants been handled in your Island. Likewise the Oppression of God's People who are Dwellers amongst you is very great, because that for Conscience sake towards God they cannot send Horses nor go in Arms, their Goods are taken from them, almost to the Ruin of some Families outwardly. So all these things and more the great God both of Heaven and Earth taketh notice of; and

and surely if there be not a speedy course taken for to ease these heavy Burdens and Oppressions of his People, who are indeed made a Prey upon for turning from Iniquity, and Persecuted for living godly in Christ Jesus: Yea, surely, even God the Lord, who knoweth how to deliver his People, who in all Ages did marvellously appear for those who trusted in him, who is now riding on conquering and to conquer; we know he is God, who changeth not, but is the same this day, yesterday and forever, with whom there is no variableness nor shadow of turning: I say, he will not turn away from any who turn unto him, and put their whole trust in him; for he hath said; *An Ears ear is not heavy that it cannot hear, neither is mine Hand shorned that it cannot save*; nor will he in any wise cast off any who come unto him. So now there are many that can draw near unto the Throne of his Grace, and can come unto him as unto a faithful Creator, who hath promised, *That the Rod of the Wicked shall not alwayes rest on the back of the Righteous, lest they turn to Folly*: So I say, that God will shew forth more and more of his Mercies unto thousands, who love him and keep his Commands; and his Indignation will be known upon thousands of them that hate him, and keep not his Commands; *For if any say, they love God, and keep not his Commands, such are Lyes, and do not the Truth*: So these are his Commands, *Thou shalt love the Lord thy God with all thy heart, and with all thy mind, and with all thy strength, and thy Neighbour as thy self*; so to fear God & to keep his Commands is the whole Duty of man, as say the Scriptures of Truth. Now, I say, they who take away Goods from any, would not be so done unto; they who do imprison any when what is done is for the Answer of a Good Conscience towards God, such would not be done unto; such as go about to Kill with the Sword or any carnal Weapon, they would not that another should do so to them; but Christ saith, *He which killeth with the Sword, shall be killed with the Sword*: So all his Followers or Disciples must not take up any carnal Weapon; for *their Weapons are spiritual, and mighty through Gods strength* for the pulling down of the spiritual Wickedness; *they must take his Yoke, which is easie, and his Burden, which is light, they must take up the Cross daily, which is the Power of God unto Salvation* unto

all that believe and obey the Truth; they must walk in the Light as he is in the Light, and so become Children of the Light and of the Day, by putting off all the Works of Darkness and of the Night: and these are Christ's Commands to all his little Flock, for whom he said that a Kingdom is prepared; yea, he said, Walk in the Light while you have the Light, and work while it is called to Day, for the Night cometh wherein none can work; yea, the Night cometh, I say, upon the Children of the Night, in whom the Prince of this World ruleth, where the Wars are, and Rumours of Wars within and without: But blessed be God, there are many Children of the Day who can truly say, Greater is he that is in us than he that is in the World; and Christ said to his Followers, If ye were of the World, the World would love his own; but ye are not of the World, even as I am not of the World; but I have chosen you out of the World, therefore doth the World hate you; but they hated me before they hated you; and for this cause they hated me, because I testified that the Works thereof are evil. So now consider what is of the World, Evil Thoughts, Envy, Malice, the Lust of the Flesh, the Lust of the Eye, and the Pride of Life, with other such like things, and the Love of the World, which is Enmity with God, as saith the Scripture; for where the Love of the World is, the Love of the Father is not. And so, I say, turn to the Light of Christ Jesus in your Consciences, that with it you may see how it stands between God and your immortal Souls; for that is it which stands all people most in stead, that is to say, how it shall be with us when we go hence and be no more, even so our long home; for our time here is but a moment in comparison of Eternity; and all Souls are immortal, either ever to live with God in Joy & Happiness, or else in eternal separation from him, in perpetual Misery & Torment, in that Fire which can't be quenched; as for instance, you may read how that Dives when he was in Hell was not dead, but living in that place of Torment, where he saw Lazarus in Abraham's Bosom, and how Abraham said, Now remember how thou in thy Life-time had thy good things, but Lazarus evil things; but now he is comforted, and thou tormented: and further he said, There is a great Gulf between, that those who would come from thence cannot come; so his Day time was gone

over his Head. O therefore I warn you in God's Fear, lay these things to heart, before it be too late, and your day of Visitation pass over your Heads; and let not these things be to you as a Tale that is told, but, as I said, turn to within, to the Light of Christ, and every one deal truly with your own Souls, while you have a time and space given you; for *God will not be mocked, such as every one sows, such shall they reap; they who sow to the Flesh, shall of the Flesh reap Corruption; but who so soweth to the Spirit, doth from the Spirit reap Life everlasting.* Now what can any sow to the Spirit? I say, Nothing but Obedience to its Requirements; for so is Life reaped, and Joy and Peace, that none can take away; blessed and praised be God forever, doth my Soul say: and as saith the Scripture, so we say, All have a Measure of the Spirit given to profit withal, as to God-ward; and by it all may know a profitting in the Knowledge of God, *whom to know is Life*; and some have more and some less, as it is testified: but he who hath least, if he come to improve it, he shall find it sufficient for Salvation, for Reproof, for Instruction: and *the Reproof of Instruction is the Way of Life*; and so herein it is that God's Grace hath appeared unto all, in that all are enlightned with a measure of the true Light, which as the Apostle said, *The Grace of God hath appeared to all men, which teacheth us, that denying all Worldly Lusts, we might live soberly, righteously and godly in this present evil World*: so it hath appeared to all, but all do not turn to it, to be taught by it. And Christ saith, *I am the Light of the World*: and John saith, *That was the true Light, which enlightneth every man that cometh into the World*: So we say this is the Grace, the Light, which manifesteth all that is to be known of God, for by it God hath shewn it unto us, and by it God will shew it unto all who believe in it, and no other way but by the measure of his Grace made known in the hearts of all Believers, whereby a profitting is known, and a growing from one degree of Grace to another degree of Grace; for, *By Grace are we saved, and that not of our selves, it is the Gift of God*, as said the Apostle, who was taught first to live soberly, then righteously, then godly, and *so do unto all as we would have all do unto us*; for so it teaches, and brings into Righteousness and true Holiness, *without which none can ever see God*: So all that do run this Race
which

which is set before us faithful unto the end, shall surely obtain the Crown of Life, which God the Righteous Judge shall give at that day: So the Way of Life and the Way of Death is set before every Man and every Woman; so *they who love the Light, they bring all their deeds to the Light, that thereby they may be tried whether they are wrought in God, who is Light, with whom there is no Darknes at all; for God will render unto all according as their Works are, whether good or evil; but they who hate the Light, love their evil deeds, and will not bring their deeds to be tried, lest by the Light they should be reprov'd; for that which manifesteth is Light; so while it shines in Darknes, the Darknes cannot comprehend it; but as it shineth out of the Darknes, then shall all see how it is with them; that is a measure of him who told the Woman of Samaria all that ever she had done, who when she had met with him, she ran and told them of the City, and said, Is not this the Christ?* so when we had found him, by turning to the *Light*, for that is his Name, we cannot but tell you of him, that you may wait to see his Day-star arise in your Hearts, which gives the true Knowledge of God and of his Glory in the Face of Jesus Christ; and his Name is called *The Word of God*. So to the Word of Faith, which is near all, in the Heart and in the Mouth, that all may obey and do it; for *Obedience is better then Sacrifice, and to Hearken better then the Fat of Rams*: yea, this Word is a swift Witness, as it is given heed unto, against every Evil Way, and Evil Word, and Evil Thought; and as it is minded it saith, *This is the Way, walk in it*, when thou turnest to the right hand or to the left; and so as Christ said, *This is the Condemnation of the World, that Light is come into the World, but men love Darknes rather then Light, because their deeds are evil*: so that which shews the Evil, the same gives power against all Evil, and purifies the Conscience from all dead works, and makes alive to serve God in the newness of his own Spirit; to whom be Praise and Glory, even to God, who is over all in Heaven and Earth blessed forever and ever, Amen.

So this is a *Testimony* and also a *Warning* from one who hath obtained Mercy through Christ the Lord of Life and Glory, that now ye may seek God, that ye may find him to your Joy; for he is not far from any one of you; and this is the way to keep God's
Judg.

Judgments from a Place or Land, even by keeping his Commands; for it is said, that *a man's greatest Enemies are those of his own house*. And also consider if Iniquity doth not greatly abound in your Island, and even the Sins of *Egypt, Babylon and Sodom*; first *Egypt*, Hardness of Heart; for as *Pharaoh* said, having hardened his Heart against the Servant of the Lord, *Moses*, he said, *Who is the Lord that I should obey him?* and then the Sins of *Babylon*, Whoredom and Confusion of Tongues, as Cursing, Swearing, and not Plainness of speech one to another; whereas Christ said, *Let your Communication be Yea, Yea, and Nay, Nay, for what is more cometh of evil*: and then the Sins of *Sodom*, Pride, Idleness and Fulness of Bread. Now let that of God in all your Consciences answer if these things be not so, which are herein testified, and that by the Movings of God's Spirit in my Heart; and indeed, it is for no other end then to clear my Conscience in his Sight: So if you would have God's Anger turned away, and his Hand of Mercy stretched out towards you still, and towards your Island, it must be by turning to him, who will then turn unto you, and to lie low under his Mighty Hand; for if God keepeth not the City or Place, all the Watchmen watch but in vain. So this is in true Love to your Souls, from one who is known by the Name of

LYDIA FELL.

THE END,

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LEX TALIONIS:
OR, THE
AUTHOR
OF
Naked Truth
STRIPT NAKED.

Decker 2092



[Rev. Philip Fell]

L O N D O N,
Printed for Henry Brome at the Gun at the West
End of St. Pauls. MDCLXXVI.

LEX TEMPLORUM
A U T H O R
MARKED 1 1000

Imprimatur.

G. Jāne R. P. D. Hen. Episc.

Lond. à Sacris Domesticiis.

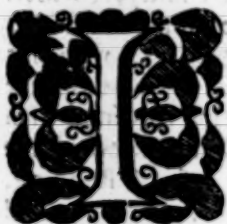
Printed for Henry Broom at the Sign of the Wolf
and of the Lamb at the Sign of the Lamb

LEX TALIONIS:

OR,

The Author of *Naked Truth* stript naked.

To the Chapter concerning the Articles of Faith.



Have perused the Pamphlet which you sent of *Naked Truth*, and whereas you require me to give you my opinion of it, though I might refer you to the Printed Discourse of that worthy Person who has animadverted upon it; yet because this would look like an Artificial excusing of pains, and seem only more civilly to disobey, I will trouble you with the cursory reflections which I made upon a hasty view of the aforesaid Book; wherein I shall chiefly aim at two things not particularly designed in the Printed Answer: First, to shew that this *humble Moderator* (as he styles himself) who pretends in his Title to give the true state of the *Primitive Church*, is utterly ignorant of Ecclesiastical Antiquity, and grossly mistaken in the representations he makes thereof. And then secondly, whereas he boldly avers to the Lords and Commons, to whom he has the confidence to dedicate his Libel, *that there is nothing therein contained which is contrary to the known Laws of the Land*; I shall evidence that several things therein contained are as contrary to the known Laws as his Printing without Licence confessedly was: and that the Book is pernicious, and tending to the disturbance of the establish'd constitution of the Church and State.

As to the Book considered in the gross, my first reflexion about it was, whether it could be the work of the same person, several things being so well, and more so very ill said; Therefore if it hapned to have one single Author, it either seem'd the exercise of Wit of some Sceptic and Atheistical derider of Religion, who desired to make sport with holy things, and say *pro* and *contra*, all that occur'd to his mind: Or else that it was wrote in the different intervals of a craz'd Enthusiast, and therefore not unseasonably introduced by a declaration of being the product of Fasting and Prayer, and seeking of God, venerable words which have not left off to abuse the World: Or lastly, (which seems most probable) that it was wrote by some ambitious discontented Person of the Church of *England*, who not preferred according to his merit, or what may be greater than that, his expectation, his mind being leaven'd with spite and anger, cavils at the present Constitution of the Church; and he having in ill humour left off studying, writes out of memory imperfect shreds of Antiquity, and yet not able to cast away at once the Principles formerly imbib'd, sometimes speaks in favour to Conformity, and quarrels the disobedience of Dissenters.

But to pass from Conjectures to that which is more certainly before us. At the first setting out our Author tells us, That the Primitive Church received *the Apostles Creed, as the sum total of Faith necessary to Salvation*. And then disputes, *why is it not now so?* Which involving an intimation that in the Church of *England* it is not thought so, can only tend to sedition, being an odious suggestion; and absolutely false: And it is known, that scarcely any thing is more particularly insisted on by our Church against the Papists than their making new Articles to the Creed. But it seems the fault will rather lie upon us, that with the Primitive Church, we think the whole Creed necessary: For we are bid remember and observe, *That the Treasurer to Candace his Creed was only, I believe that Jesus Christ is the Son of God; and no more than*

that this purchased the Kingdom of Heaven, &c. That is, the Articles of the Death of our Saviour, his Resurrection, and Ascension; at least, those of the Catholick Church, the Communion of Saints, the Forgiveness of Sins, and Resurrection of the Body, are if not superfluous, yet unnecessary speculations. How well this suits with the close of the *Athanasian Creed*, our Author would do well to consider: If it shocks it, then he must confess that he has said something contrary to the known Laws of the Land: The Liturgy (of which that makes a part) being confirmed by several Acts of Parliament, and in particular the late one of Uniformity. Moreover, the Statute of *Primo Eliz.* which established the Oath of Supremacy, determining the limits of Heresie to be, not only what has been ordered or judged to be so, by the Authority of the Canonical Scriptures, but also by the first four General Councils, or any of them; he may bethink himself, whether the System of what is to be held *de fide*, by the Law of the Land, is so narrow as is here pretended. But our Author says, *Philip required no more of the Eunuch than this short Confession, that I believe that Jesus Christ is the Son of God, and that there is no assurance nor great probability that he was more fully instructed*; which is plainly to contradict the Text of *S. Luke*, who tells us, that *Philip* (from the place of *Isaiah* which the Eunuch was reading) began at the same Scripture, and preached unto him *Jesus*; which certainly expresses a greater compass of particularities than is in the short System here proposed. Yet farther, it would be considered whether our Authors Argument be good; *Philip required no more, but baptized him on this*; and had the Eunuch departed this life in the same instant that *Philip* parted from him, *I believe I have better assurance that this Faith would have saved the Eunuch, than any man hath that he was ever taught more*; therefore that Confession here required, is a sufficient Summary of Faith. For sure there is more required as necessary to be known of a Man, than of a Child in Christ. Such a knowledge as persuades to the

the undertaking the Covenant and duties of the Gospel, may entitle unto Baptism; but yet neither involves the knowledge of the whole Gospel, nor supersedes the necessity of it. As to the Event of the Eunuchs condition had he departed this life immediately after Baptism, it is as much to the purpose as if one should say, that if an Infant immediately after Baptism should depart this life, he would be saved even without the Eunuchs Creed, therefore even that may well be spared. But after a complaint of the *mischief arising from the establishment of new and many Articles of Faith; and requiring all to assent unto them:* (which let them who are guilty of doing answer for it) the Author goes on to say, *That for his part he thinks nothing can be more clearly deduced from Scripture, nothing more fully expressed in Scripture, nothing more suitable to natural Reason, than that no man should be forced to believe.* Whereby he means, or else he can mean nothing, (for what appears not is as if it were not) that no man should be forced to declare his belief of any thing. Now since the Scripture under the severest penalties requires the confession of Christ before men, it is not sure contrary to Scripture, that Persons should be forced to declare their Belief; and if so, will not be thought unsuitable to natural Reason neither. But now let us see whether this Assertion of our Author be not *contrary to the Law of the Land*, notwithstanding the assurance we have from him who tells us, *there is not a word in his discourse against it.* The Oath of Sovereignty, enjoined by the Statute before mentioned, *Primo Eliz.* commands the Subject "to testifie and declare in his "conscience, that the Kings Majesty is the only Supreme "Governour of this Realm, and of all other his Highness "Dominions and Countries, as well in all Spiritual or Ecclesiastical things or causes, as Temporal, &c. So likewise the other *Tertio Jacob.* "I truly and sincerely acknowledge, "profess, testifie, and declare in my conscience before God "and the World, &c. And the Act of Uniformity commands "the Abjuring of the Covenant, and assenting and "consenting

“consenting to every thing contained in the Liturgy. And after this, let my Author consider with what duty and good manners he concludes, *Thus you see how impertinent, how irrational, how impious it is to require a man to believe (that is, profess his belief of) any thing more than is clearly contained in Scripture.* The truth is, we, dull as we are, do not at all see this impertinence and unreasonableness, notwithstanding the beautiful illustrations of the *Eye and the Candle, the hammer and the beating out the brains.* St. Paul hath taught us that Heresie is a work of the flesh, and we know Pride, and Prepossession, and Interest are of more concernment therein than want of faculties and apprehension. The thing complained of is, that men turn away their faces, shut their eyes, and will not lay their heads to consider what is set before them: And if the immorality of error be once cured, there will be a speedy account of its misadventures in Speculation and Theory. The Will of man has an higher pretence to freedom than the Intellect; Tyranny can make me suffer, but cannot oblige me to approve, much less to chuse: and yet it is not impertinent or irrational to require men to will, and, what is more than that, actually to perform their duty: Nor can any sufficient cause be rendered, why perverse and stubborn men should not be made to learn it and consider it too; which plainly is their duty, and previous to the performance of it. The Scripture indeed commands to speak the truth in love, to instruct the Brother in the spirit of meekness; and the same Scripture has made the greatest Christian Monarch, and his meanest Vassal brethren; but notwithstanding that, he bears not the Sword in vain; and in love and meekness, and with the greatest kindness and charity, is obliged to cut off the evil doer. The question, *To what purpose is force?* would indeed do well in the mouth of a Ranter or Anabaptist, and I might answer thereto, that it is ordained by God to punish the rebellion of such a question by sharp severities; but I shall content my self to repeat the Apostles words, just now recited,

recited, *The Magistrate bears not the Sword in vain*; there is a purpose why force should be used, and all sober men understand it, though our Author knows not of it. What is added of the *Scripture rule of Faith being compleat and full* is seriously to be considered: But he who straitens the *credenda* into one short Proposition of the Eunuchs Creed, may in likelihood be as blameable in diminishing from it, as any can be by adding to it. Though, by the way, our Author is to know, that the explication of Faith, is not the extending or making new Articles of it. And what he says of *requiring men to believe with Divine Faith what they add to the Scripture, is to make their words equal with Gods*: If this refer to the Church of England, first he proceeds on a false supposal, that there is somewhat added, when there is not any thing added; And secondly, it is notorious, they have never pretended that any thing ought to be believed, *as Scripture, or with Divine Faith*, but Scripture. So that the exaggerations of *impertinent, irrational, and impious*, fall to the ground, unless they may chance to rest upon the head of him who to seditious and uncharitable purposes produces them.

The next Paragraph desires it may be soberly considered; that *the Trinity, Incarnation, Resurrection* are things far above the highest reason, yet believed, because God, who cannot lie, hath declared them: And that it is strange that any one should take upon him to declare one tittle of them more than God hath declared. But I desire to be allowed to put in a caveat, that men should not be suffered to declare several (not tittles, but) Articles, less than God hath declared; that our Authors direction concerning the *quashing the whole debate of the Omoousios and Omoiousios* may not be admitted; and for quietness sake we may not be Latitudinarian Arians, and Theists; pretend to admit the Scripture-Doctrines in our own extravagant sense, and therefore to be liable to no controul, or farther rendring a reason of the Faith that is in us. It is easie to say, that the Bishops who contended in this great
Controversie

Controversie were more zealous than discreet: But they who have read the History of those times (which it is plain, our Author never did) know very well that the Orthodox, if they were defective in any thing, offended in permitting by their lenity *Arius* to infect the World and form his party, before ever they took notice of him: And the discreet advice here given by silence to prevent the Malice, Rancor, Persecution, and war, which fell upon the Orthodox, might as well have been given to the Christians, during the ten Persecutions; and doubtless might have preserved many thousand lives, and damned as many souls. The instance here mentioned of the Resurrection falls very pat to the purpose; the Scripture hapning to afford a Parallel of what our Author thinks so adviseable. The Resurrection (he tells us) whereby men shall rise with the same body, when one body may be eaten and converted into several bodies, is far above the highest reason and sharpest understanding; yet was believed by Hymeneus and Philetus, because God had declared it: Yet they by keeping within the bounds which God had declared, and referring it to that which was perfectly true, the first Resurrection from the death of sin, destroyed the faith of some: And it is to be hoped that St. Paul was not more zealous than discreet, because he was so earnestly concerned against them. There is no Arian nor Socinian who professes not to believe in Jesus Christ the Son of God, or allows him not to be God; but our Author must hold us excused, if we expect farther satisfaction in so weighty a concern, and examine how these Gentlemen stand affected to the tenure by which he holds his Godhead, and the *Shiboleth* of his Eternal Generation, and the *λω ογα εν λω*. I am no friend to the unravelling of Mysteries, and making them so evident as to forfeit their nature; yet I must not be so much a Socinian, notwithstanding our Authors opinion concerning the procession of the Holy Ghost, of *I will send the Comforter*: Or of the Sacrament, *This is my Body*: To believe every one Orthodox who admits those words to be Scripture, and declaratory of

truth. He says indeed, that we have no other safe way to speak of divine matters, but in Scripture Language, *ipsissimis verbis*, with the very same words. How then I pray comes it about that we may speak of them in Dutch, or French, or English? they are none of them the *ipsissima verba*, the original Hebrew or Greek. It were easie to shew how much of our Creed the Socinian would have us cashier on this account, and how pestilent consequences have been drawn from these unhappy Premises. Nay, let us give even the Socinians their due, they in their sober Moods are not so extravagantly mad as is our Author. Volkelius in his Fifth Book and Seventh Chapter says, *Sacris voluminibus ob ipsorum perfectionem, nihil nec adjiciendum nec subtrahendum, hoc tamen non eo consilio à nobis dictum existimari velim quasi omnes dictiones, omnes sententias, omnesque collectiones iisdem literis ac syllabis in S. Scriptura non expressas ob hoc ipsum repudiemus. Nam vel dictio aut phrasia aliqua subaudiri, vel sententia aliqua si non verbis, reipsa tamen in S. literis contineri potest, vel denique ex iisdem colligi. Id autem qualecunque est perinde habendum existimamus, ac si distinctissime scriptum extaret. Neque enim in sola verba sed precipue in verborum sententiam animum intendere debemus.* "Such is the perfection of the holy Scripture that nothing is to be added to, or taken from it. This we say, not that we reject all Words, Sentences, and Inferences, which are not there in the same Letters and Syllables. For many times Words and Phrases are to be understood; and divers things, though not verbally, yet really may be contained in the Scripture, or inferred from it. All which we take to be the same thing, as if it were most expressly written, for we must not consider naked words, but the meaning of them. Thus much a soberer man (I am sorry to add, a better principled Christian) is this Socinian, than our Pretender to Naked Truth. But he is so liberal as to give a reason of his opinion: *If in Divine Masters we once give way to Humane Deductions, a cunning Sophist may soon lead a weak Disputant into many Errors.* Truly very well

well urged; Whole fault is it that men are weak Disputants, or being so, that they will meddle with Controversie? St. Paul has abundantly provided in the case, *Him that is weak in the Faith receive; but not so doubtful Disputations.* Men of Parts and Learning will comprehend a Deduction as perfectly as the Text it self: And they who are deficient either in natural or acquired Knowledge, will understand neither one or other; whereof we have an example here before us.

And now a mighty heat is struck upon the sudden against School-Divinity, as the greatest plague to Christian Religion. In which career our Author, to shew his Learning, tells us, That the School at Alexandria was the first Divinity-School he reads of. He might have better told us of the School of one Tyrannus, where St. Paul read his Lectures. Certainly the Angelical, the irrefragable, the subtil, and most founded Doctors would have been very proud of such Antiquity as the age of Pantenus: But Peter Lombard, it is likely, would not have taken it well to be robb'd of his Mastership; and to be made an Usher, nay, School-boy to Pantenus. Well, we will pass this over; The School of Alexandria, we are told, was set up by Pantenus. Our Author might more reasonably have said, that it was set up by St. Mark; had he ever heard of Eusebius his relation, he could not have been so grossly ignorant. In this very account here pointed to, he expressly says, that this School was in Pantenus his time, Ἐξ αρχαῖς Ἰηὺς διδασκαλίας τῶν ἱερῶν λόγων παρ' αὐτοῖς οὐρεσθαι. "There was of ancient Custom, settled with them a School of the holy Scriptures. Now Pantenus lived in the time of Commodus, and what could then be said to have been from ancient times, will bid fair to be almost as old as Christianity it self. Our Author goes on with the same ill Stars, and the very next Period is a new misadventure: From this School, says he, sprung forth that damnable Heresie of the Arians. What shall we say if Arius were neither bred up at all, nor was a Professor in this School, but an African by birth, and a plain Parish Priest

of *Alexandria*? Nay farther, what shall we say if this School was employed in an honest Catechism-Lecture, or Exposition of the Scripture, and had nothing more to do with teaching School-Divinity than in teaching Anatomy, or Mathematicks? Will not this Gentleman, whoever he is, appear a wonderful meek Writer; fitter to deal in a Romance than Church-History? Of his Country and Employment *Epiphanius* informs us, *ἦσαν αὐτὸν διδῶν τῷ γένει, ἐν Ἀλεξανδρείᾳ δὲ Πρεσβύτερον χειροτόνῃ, ὅς ἐπερίετο τῆς ἐκκλησίας τῆς Βαυκαλίας ἵτω καλῶν;* "He was of *Libya* by his Country; and being made a Priest in *Alexandria*, was preferred to the Church called *Baucaliu*." And that we may be more assured of the nature of his Employment, *Epiphanius* presently reckons up the other Churches of that great City, and recites the names of several of the Rectors of them. That this School was for Catechizing, *St. Jerom* is most express, who in his Catalogue of Ecclesiastical Writers, says that *Clement*, after *Pantenus*; *Alexandria Ecclesiasticam Scholam tenuit, & κατηγόρου Magister fuit*. "*Clement* after *Pantenus* kept the Ecclesiastical School at *Alexandria*, and was Catechist there. We see then what a goodly Bracelet of false Pearls our Author has hung together upon a string in hopes to adorn himself with them. One would now have the curiosity to guess what should come into his head positively to assert so many false and extravagant things. Was *Pantenus* a Heretick, or noted for a great Sophister and man of Notions, and thereby obnoxious to have the great plague to Christian Religion, School-Divinity fastened upon him? Nothing of all this: He is by *Eusebius* (l. 5. c. 10.) styled, "*ἄνθρωπος ἐνδοξότατος*", a most famous man, and said "to have shewed so much, and such Divine Zeal for the Word of God, as to have gone and preached the Gospel unto the *Indians*: And that after his return he was made Master of this School; where partly by Words, partly by Writing he expounded the Treasures of Divine Knowledge. But secondly, had this School at any time been so

unfortunate

unfortunate as to have bred up notorious Hereticks; or perverse Disputers that did mischief in the Church? Nothing of this neither; it was the happy Nursery of the most eminent Propagators of the Christian Faith, and at this time when *Arianism* entred the World, merited this Character, *Εἰς ἡμᾶς ἐβλάπτεται. ὁ θεὸς ᾧ ἐν λόγῳ ἐπὶ πλεῖστον θεῖα σπουδὴ δυνάτων συνεστῆκεν παρηλθῆκαί.* "It continues to our times, and is celebrated for persons powerful in the Word, and study of Divine things. What then could be the matter that should have led a poor innocent man into such a Maze of falsehoods? Why surely no more than this: He had heard from the Parson of the Parish, or some other good body in discourse, that the Arian Heresie took its rise from *Alexandria*; that it supported it self much with quirks of Philosophy, and Sophistical Nicities; and that there was a Divinity-School at *Alexandria*, and a notable man, one *Pantenus*, had been Master of it; and now if this were put together, and all the Heresies of the world laid upon the back of this *Pantenus* and School-Divinity, it would make a very pretty story, and look like a learned account of Antiquity. Just as if a stranger should have heard, that there was a mischievous fanatical Rebellion, which *overran the whole Nation*, and was the cause of the destruction of so many thousands of Christians both body and soul, fomented and carried on at *Westminster* in *England*; and likewise that there was a famous School, and one *Dr. Lambert Osbaston*, a noted man, had been Master of it; and then should tack all this together, and say, that *Westminster* School was a Seminary of Fanaticism and Rebellion, and that *Dr. Lambert Osbaston* was the first and chief Promoter of it. Now this ridiculous Fable is far more probable than that which our Author obtrudes upon us, in that several of the Ringleaders in the late Rebellion, as *Sir Arthur Haslerig*, *Sir Harry Vane*, *Scot*, and others, were really Scholars to *Dr. Osbaston*, and Governours of that School; nothing of which nature can be truly suggested of the other.

other. But our Author goes on, and has certainly made a Vow not to say one true word in this whole Paragraph, and keeps it most religiously. His following period runs thus: *The Heresies before this were so gross and sensual, that none took them up but dissolute or frantick people, and soon vanish: But after this School-subtil way of arguing was brought into Christianity, Heresie grew more refined, and so subtil, that the plain pious Fathers of the Church knew not how to lay hold of it, &c.* But now what will become of us, if there were refined, and spiritual Heresies before? Nay, in a manner if this very Heresie were so? What if they were followed by men neither dissolute, nor frantick? nor did soon vanish? And that the Fathers of the Church were not so plain men, but that they knew how to encounter this School-Divinity Monster? Has not our Author the worst luck of any man that ever put Pen to Paper? As to the sensuality and grossness of Heresie; nor to look higher than the confines of this Age we talk of, surely neither Novatianism, nor the Heresie of *Sabellius*, or *Paulus Samosatenus*, of which Arianism was but an off-set, were gross or sensual: Nor were *Novatus*, *Tatian*, *Tertullian*, and *Origen*, who were all very considerable men, and fell into Heresie before this time, ever noted for being *frantick or dissolute people*. But on the contrary, their very severity of life, and zeal for Vertue, were the prime occasion of their Heresies. Nor did their Heresies soon vanish, but continued for several Ages, some in their own, others under new names and titles. And whosoever reads the Controversies of those times will find that *the pious Fathers of the Church were not quite baffled by School-distinctions and evasions; nor did these Sophisters, proud of their conquest, triumph and carry away a specious appearance of truth: But the advantage of Arius was quite of another kind in application and address.* Γλῶσσι δὲ τῇ ὑποταγῇ, τοῖσιν αἰὶ ψυχῇς ὁ βασιλεὺς.
 “He was of taking and pleasant conversation, always
 “glozing and flattering, as *Epiphanius* tells us; then adds,
 ὑποπλάσσει ἐν ἑσέσω τῶν ἐποκόπων μὲν βασιλεὺς τὸ ὁμιλεῖν
 ἵνα

ἡ καὶ αὐτὴ πολλὰς παροίης συνέργει. "He address to each particular
 14 Bishop with insinuating arts and flatteries, whereby he
 15 drew in many to be Partizans with him. And, as *Saza-*
men expresses it, Ἀρχιερεῖς οἱ ἀμφὶ τῷ Ἀρειῷ ἀναρχαίον ἐν
 τῷ ἑνοσίῳ περὶ θάσσει πῶν καὶ πόλιν ἐποιήσαν, προσέδορται πρὸς
 αὐτοῖς, ἐπελάττες ὡς ἐντονοῦν... ἡ μολέται δ' ὡρῶν αὐτοῖς τὸ π
 σαρδαζέμερον. "His Party finding it their interest to pre-
 16 possels in their behalf the Bishops of each City, they sent
 17 their Agents to them, with confessions of their Faith...
 18 which practice turned mightily to their advantage. But
 their chief advantage lay in their Court insinuations, first
 with *Constantines* Sister during his life; and after with *Con-*
stantius his Sons after his death; and when the *Arians* had
 the suffrage of an Emperour on their side, we need not im-
 pute it to Sophistry that they prevailed.

Our Author, having not as he thinks fully enough disco-
 19 vered to us the mysteries of his knowledge, goes on, with
 the same auspices of Ignorance and Error, to acquaint us
 farther: That this great bane of the Church took its rise from
 hence: Many of the Primitive Doctors and Fathers, being conver-
 20 ted from Heathenism, and having by long and great industry ac-
 21 quired much knowledge in natural Philosophy, Antiquity, History,
 and subtil Logick or Sophistry, were very unwilling to abandon
 quite these their long studied and dearly beloved Sciences, falsely so
 22 called; and therefore translated them into Christianity, &c. And
 now we know perfectly the true cause of all the Heresies
 that ever came into the Church. I will adventure not-
 23 withstanding all this to add one more to the number, and
 say, in opposition to what is here averred, that Christiani-
 ty received more advantage from Philosophy than ever it
 24 did damage from it. It is true, as *Tertullian* tells us, that
 the Philosophers were the Patriarchs of Hereticks, but it
 is as true, they were the Champions of Christian truth.
 He must be a stranger to every thing that relates to the
 Church, who know not how much Religion owes to *Justin-*
Martyr, *Athenagoras*, *Ammonius*, *Pantenus*, *Clemens of Alex-*
andria,

andria, and (notwithstanding all his misadventures) to Origen himself. The last and most dangerous attempt against Christianity was the setting up Heathen Morality, gilded over with Magick against Christian Ethicks; laboured by Apollonius Tyanus, Porphyry, Jamlicus, Plotinus, Hierocles, Simplicius, and several others: And had not the good providence of God raised up the before mentioned, and other eminent Christian Philosophers, to attack them in their strengths, and fight them with their own Weapons; it is to be feared our holy Faith would not have had so easie, or so clear a victory over the World. But because our Author has so particular a Pique against Sophistry, I shall desire him at his leisure to read the twenty ninth Chapter of the seventh Book of Eusebius's Ecclesiastical History, the Title of which Chapter is, "Ὅπως ὁ Παῦλος ἐλεγχθεὶς καὶ Μαλχίωνος πρὸς αὐτὸν σφοδρῶς πρεσβυτέρου, ἐξεκινύχθη. " How " Paulus Samosatenus, baffled and confuted by one Malchion a " Priest, who had been a Sophister, was deposed. And sure the Sophister may be allowed to have done no small service, who baffled and confuted that so considerable Heretick.

But the stop put to the Donatists Schism, by the interposition of the Civil Magistrate is a great mote in our Authors eye, and one way or other he will be sure to remove it. First, he tells us, *It is well known the Donatists were a Set very turbulent in behaviour.* Alas, our Author has a Confessors memory, and has quite forgot the unpeaceable temper of our Dissenters, and how naturally Conventicles mustered themselves into Armies: But which way the enforcing a Confession of Faith comes to be our case, he will do well to interpret himself. If he speaks against the Penal Laws; and the tendering of the Oath of Supremacy to Recusants thereby directed, be the enforcing a Confession of Faith which he speaks against; there is again somewhat contained in his Book which is contrary to the known Laws of the Land. Fearing the success of this answer, he offers another,

another, which is, that *for ought any body knows these seeming converted Donatists were only Hypocrites, who for the love of the World, more than for the love of the truth, forsook their Heretical Profession, or if their hearts were really changed as to belief, it is evident they were worldly still, and not one step nearer heaven.* First, if *for ought any body knows these Donatists were only Hypocrites,* for ought any body knows they were sincere, and Charity obliges to the better side. As to the carnality of *their hearts,* it is Gods, and not our Authors, Prerogative to judge of them; In the mean-time, it is surely of some good effect, to have set the understanding right, though a thorough reformation be not made on the affections. The ill luck is, the reasoning of our Author herein, if it prove any thing, is as valid against the Secular Magistrates restraining Immorality and Vice, as well as Error. For men may be Hypocrites, and carnal in their hearts; may design and wish Murder, Fraud, and Theft, though for fear they dare not act them. Our Author has more solutions in his Budget, and is very liberal of them, for he goes on, and says, *That though we farther grant the pruning of the Magistrates Sword did really correct the viciousness of the Tree, yet we must not do evil that good may come of it.* That is, to punish Hereticks is in its self, and in its nature evil. This, I confess, comes home to the point, and would have superseded the former: But the proof is wanting, and must ever be; for the Assertion is false, as we have shewed above: And is contrary not only to all the Imperial Laws, made against Hereticks, as also the Ecclesiastical of this National Church; but the Municipal, against which our Author gave the Parliament his engagement that he had not spoken a word. But the illustration of this his Position is wonderfully pleasant, I mean the instance of *Peter's cutting off Malchus his ear, for which he is sharply reprov'd, and threatned with perishing by the Sword, &c.* As if because St. Peter, a private man, might not use the Sword against the Magistrate, the Magistrate might not neither against a private man. But lastly, if none of all the answers will conclude, there is one in re-

serve that infallibly will do the feat, it is the Turkish and Mr. Hobbes's Appeal to Fate: *They who are ordained to Eternal life will believe, and the rest are hardened; the sharpest sword in this world will not enter the hard heart more than an Adamant.* And so farewell to all Exhortations and Instructions; to all Threats, Rewards, and Punishments: Nay, to all Arguments and discoursings. Our Author was predestined to talk absurdly, and the *sharpest* reason in this world will no more enter the hard head than an Adamant.

Our good man recapitulates the whole matter, and would have us not mistake him. *All this he says in reference to compelling men to believe or conform, reserving to the Magistrate power to punish evil Doers, not evil Believers.* I pray Sir remember once more your promise to the Parliament; whatever shift you will make to palliate the matter concerning there not being Laws to compel men to believe, I am sure there are Laws enough which would fain by Penalties compel men to conform; and here you tell us, that all this long discourse is levelled against them. What pity it is that great Wits, and men who speak untruth, have not better memories? Whatever punishment they are worthy of who disobey the Laws; they deserve much greater who stand in defiance, and dispute against them; but what shall we say of him who at once denies and boasts his guilt, robs in the midst of an Assize, and while he does so, cries out unto the Judge, and desires him to take notice that he does no harm?

To the Appendix.

Our Author having abridged the Articles of Faith into his Eunuchs Creed, one would have hoped his Comment would have bore some proportion to his Text, but he has not yet shewed all his learning, and profound knowledge in Church Affairs; and therefore we are blest with his bounty in an Appendix.

And first, his Instances of the Millenary Error, Infants communicating, the Cross and Chrism, have (if one mark it)

it) a mighty Neighbourhood with the Articles of Faith; and the first Reformers by discarding the use of most, and taking away the abuse of all of them, have discovered their shyness, and timorousness to reject that Authority which they had long revered: And in modesty some of them admitting the Authority of the Fathers and Councils, for three or four of the first Centuries, some admitted five or six, whereby they were reduced sometimes to great streights in their disputations. A heavy charge indeed upon the first Reformers, that they had a reverence for Fathers and Councils; and the Instances brought are wonderfully proper to demonstrate the streights to which Protestants are likely to be brought in their Disputations, the most of them being equally rejected by all with whom they have occasion to dispute. Not to waste time with such a Trifler, I leave the question proposed to the Papists, *By what rule they reject some things, and retain others?* At their best leisure to resolve: And to that offered to the Evangelical, *by what rule they submit to the Authority of some Centuries, and refuse others?* without his help I shall frame a ready answer. Our rule we borrow from Tertullian, *Illud verum quod primum*: And add, that in all Concerns of Religion we make our resort and utmost appeal to Scripture; but own also a great deference to Antiquity; but by Antiquity, mean not, as our Author fondly imagines (who talks of Sacred things, as if he had newly put off his Apron) the opinion of three or four Writers of all the first Ages; nor of all of any one; but the uniform concurrence both of Times and Persons. Now, why the later Centuries should not be looked upon with the same reverence as the former, is in it self evident, they having not the like Stamp and Character of Antiquity. Besides, our Controversies being chiefly with the Papists, whose Exorbitancies breaking in upon the World most notoriously about the sixth Century, we think upon the common rules of judiciary proceeding, we have all reason to decline the testimony of obnoxious Persons and Times. I am weary of pursuing Step by Step insolent impertinencies; and therefore for this time shall let pass the

Pygmy and the Giant; the charge upon *Irenaeus* (*Papian*; *St. Austin*; and *Lactantius*; with the good Character of our Authors own zeal, Sincerity, and eminent Parts; it being, as he says, *possible*, nay, (what you will wonder at, having seen his discoveries in the stripping of Truth;) *probable* that there may be in the World *another who had more natural understanding, and more acquired learning than himself*. And shall proceed to his next Stage of Councils, where we are told roundly, that all the Evangelical Doctors grant; *that the later general Councils have erred*. I beg our Authors permission to differ from him herein; and humbly conceive that he will scarce meet with a considerable number, who allow any of the later Councils to be General: And if they say any have erred, they shew reasons how they came to do so, without destroying the credit due to the decisions of the Church; or our Saviours Promise, that the Gates of Hell should not prevail against her. And therefore the rest of his Harangue about Councils, being most of it false, and all of it impertinent, I shall say no more of it.

To the Chapters of Ceremonies

Our Author begins this Chapter with this *monstrous* *Why* any one of tolerable discretion should be so eager either for, or against Ceremonies. What, in the mean time, is to be done with men of our Authors kidney; men of intolerable discretion; wiser than their Superiours, than the Church wherein they live; led than who are against Ceremonies answer for their eagerness; there are others who find great reason to be eager for them. When a King of Spain presented a General of his to pass over a Punctilio of Honour which belonged to his Place, saying, That it was but a Ceremony. He replied smartly, That nothing differed the King from him but Ceremony. When our Author shall have planted his levelling Quaker Gospel, and perswaded Princes to relinquish their Ensigns of Royalty, the Sages of the Law to sit upon the Bench, the Lord Mayor

Mayor of London with his Fraternity to part with their Liveries, and unaccountable Formalities; Nay, that his Lordship should quit but his Chain and great Horse: Or lastly, that our Author, with all his self-denial, should condescend so far, that he will be pleased to sit below his Kitchin-maid at Table, or light his Plough-boy up to bed; we will endeavour to think as slightly of Ceremonies in Religion (where sure, if any where, there should be awe and reverence) as he would have us. Not long since our Neighbours of *Holland* refused to strike Sail to his Majesties Flag, upon which a bloody War ensued. Shall we borrow now our Authors Rhetorical Apostrophe, and cry out, *My Fathers, My Fathers*, so much Christian blood spilt, so many Orphans, so many Widows made, so much Treasure spent, and all for a Ceremony? I pray mount a Turnip Cart, and preach to the heathen world the Spirit of the Hat, and hold forth that striking Sail is the same Idolatry in a Ship, as the putting off a Hat is in a Brother. Certainly, there is some dismal mischief in these Ceremonies of the Church, else there would never have been such a loud outcry of *O my Fathers, my Fathers, will you restrain the Liberty of the Gospel to the rigidity of your Discipline, to lose some, to lose many, and perchance in the end to lose all, your selves and all? Be Pious, be Charitable, be Prudent, &c.* Let the World judge if such a charge, as this seems to import, be not the declaring or speaking something in derogation to, and depraving of the Liturgy of the Church, forbidden under severest Penalties in the Act of Uniformity, *Primo Eliz.* And if the expostulating with the Governours of the Church, for doing their duties themselves; and endeavouring that others should do it; be not contrary to the known Laws of the Land, which enjoins those duties, both to Bishop and People.

What our Author would be at he plainly tells us in the ensuing Period, *You will say, if you yield to some Dissenters in this, you must as well yield to others in that, and so by degrees abolish all your Ceremonies.* To this he roundly replies, *I beseech you, is not the End more than Raiment, Substance more than Ceremony?*

mony. Which is plainly to say, That to gratifie Dissenters we ought to discard all Ceremonies, and in contradiction to St. Paul, who enjoyns that all things should be done decently and in order, nothing is to be done decently and in order. I must have leave to say, That in this instance Raiment is the Body, Ceremony is substance. I may put off a Scarff, or Belt, or perchance a Coat in a cold Winters day; but should I throw off all my Cloaths, I should certainly kill my self. A Ceremony, considered *in individuo*, or retail, may be of no great moment; but they, taken *in genere*, and in the bulk, are absolutely necessary. The following Objection, that *by parting with Ceremonies*, which tend to the encreasing Devotion, preserving Order, and giving glory to Almighty God, we shall *displease our Friends, and then lie exposed to our Enemies to spoil our goods*, is of more moment than to be thrown off by saying, that our goods are only Faith, Hope, and Charity, and that these stood firm in the Primitive times, when there was not one of our Ceremonies to preserve it. Surely, the scandalizing those who do their duty, by our breaking the Laws, is a greater mischief, than to displease those who violate their duty, by our keeping the Law. A Scandal only taken is of less moment, than one both taken and given. And if Faith and Hope happen to be unconcerned in this whole matter, yet Charity is sure the natural product of Decency and Order; and the common rule, that it ought to begin at home, is here to take place, and their satisfaction be most studied who are of the Household of Faith, rather than the humour and caprice of the Desertors of it. Moreover, upon a true account it is not Charity to Dissenters to humour them in their disobedience towards their spiritual Superiours; no more than it is, to give Impunity to that of Rebels, against their temporal. But were there *no Ceremonies among the Primitive Christians*? What shall we say of the kiss of Charity, or was there *not one of ours*, surely laying on of Hands, kneeling at Prayer, the Peoples answering *Amen* after it, the having the Head uncovered in Religious Assemblies, were
more

more than one of theirs, and are our Ceremonies. I am weary of being a Scavenger, and sweeping together all the straws and dirt, which this unhappy Writer scatters as he goes; and there being nothing but clamour and sedition in the rest of this Chapter, or that which follows concerning Church-Service, which only, after a few Complements sprinkled upon Discipline and Order, labours to disparage the present Constitution, and levels those who are concerned for their duty and obedience, with the wild Rabble of Sectaries and Fanaticks. I shall without more words dismiss the Inquest, and go on to what follows.

To the Chapter of Preaching.

THE Chapter concerning Preaching is a most unreasonable reproach of the Church of *England*. After that the Uniform Vote of all our Neighbours has given us the preference in this particular, the Ministers of the Reformed Churches, *Germans, Hollanders, Danes, Swedes, French, and Switzers*, learning our Language generally to take benefit of our Sermons, and many travelling hither for that end; our Author, led to it by his excellent good nature, labours to shew his Talent in depreciating what strangers so must esteem. There was a time when Nicity of Division, and the flowers of a *Polyanthea* were somewhat in fashion; but those days are long since done, a practical sober way of pressing Christian duty is generally taken up, which has as little of the *Quid*, or the *Quale*, or the *Quantum*, as our Author seems to have in his head; or has discovered in his Writings. His project for *Preachers* is as extravagant as his Character of our Sermons. They must be *grave elderly men, not raw Novices from the University with all their Sciences and Languages; but rather sober persons of Age and Experience, having a good natural capacity, &c. that never saw the University, and knew no other Language than their Mother Tongue*: That is, they must be experienced Farmers, illuminated Coblers, or gifted Weavers; and these, no doubt, as they did twenty years since, would bring about a thorough Reformation. These

These would redeem the Church from that great contempt, the Aristotelists, Scotists, Aquinatists, with their knacks of quiddities, and qualities, Syllogisms, and Enthymems, Distinctions, and Subsumptions, and the handsome School-boy exercise of the very good Preachers of the Age, have brought upon it.

He goes on to tell us, That his heart bleeds to think how many thousand poor souls there are in this Land, that have no more knowledge of God than Heathens, &c. It is truly a lamentable thing, that where the Gospel has been so long, and so happily planted, any should be ignorant of it. Would to God all the Lords People were Prophets; but in the mean time let us not be so ungrateful, as not to own with all due acceptance and thankfulness that our People, generally speaking, are better instructed in all the parts of Saving Knowledge than any Nation in the World. And we may say it with perfect truth, and therefore without vanity, that they have also the most learned and sufficient Clergy: Men that understand the *Athanasian Creed* much better than our Author, who in his first Chapter has done what his little knowledge, and violent passion could effect, toward the undermining of it. The truth is, I cannot but wonder how it is possible for a man, that did not design to put scorn upon Religion, to offer such mad and unaccountable Proposals, and the while talk demurely, and in Scripture Phrase, as if he would be thought to be in earnest.

To the Chapter concerning Bishops and Priests.

THE long Chapter of Bishops and Priests is of the same strain with the former, it cries *Hail Master* to Episcopacy, acknowledges the *Apostolical Antiquity and Dignity thereof*; and then fairly goes about to betray it: Whether Presbytery, or Erastianism, or Atheism be at the bottom of the design, it is not easie to divine: That which is obviously apparent is, that one thred of ignorance runs through the whole discourse; neither what *Petavius* means, nor what the Character of Priesthood is, nor what the practice of the

the Church was, it at all understood; but a long blunder is made about A. B. C. as if there were no other Characters in the world besides those of the Alphabet; or as if the matter were as unintelligible as the great mystery he talks of. Which is to be known only in a *Metaphysical way of abstraction*; that the *superiour Species contains the inferiour Genus*. Indeed the nature of a Genus or a Species, which is no more than every School-boy understands, who has learnt so much of his Grammar, as to know what a Noun Appellative is, requires not much niceness of Metaphysicks; but the *superiour Species, and inferiour Genus* are terms of Art that the dull Logicians of the University stand amazed at. *Aristotle* said of a man that he was *Arbor inversa*; but our Author has here turned upside-down *Porphyries Tree*, and by it turned a Man into a Horse, for so he goes on in his learned Metaphysick Lecture. *A man, a rational Creature contains the Animality of an Horse, the inferiour Creature: But does not contain a real Horse in his belly, nor can a man beget horses, or men when he pleases. Nor can you truly say a man is a horse. I believe my School men would take it in snuff, should I affirm any of them to be horses.* Here having mended the matter, and reformed a Horse from being an inferiour Genus to a man, and made him an inferiour Creature, he says that he contains the Animality of a Horse. Upon which Hypothesis, whether he will be as ill natured as the *Schoolmen*, and take it in snuff I know not: but I am sure that I can irrefragably prove him to be a Horse. And the thin Sophism, which every Fresh-man learns to solve within a Week after he comes to the University, will be against him an unanswerable demonstration: Which, to try his patience, I propose to him in common form thus: He that says, my Author is a living Creature, says true; he that says, he is a Horse, says that he is a living Creature; therefore he who says, he is a Horse, says true. There is no denying the Syllogism, and saying it has four terms. That though indeterminate animality be enounced of the Species, yet that which is determined by the contrary difference may not. That is, the Animality of a Brute will

belong only to an irrational animal, as that of a man to a rational; for our Author has precluded himself from that answer, by saying expressly that *a man, a rational Creature, contains the animality of a Horse, the inferiour or irrational Creature.* And now if my Author be not a mere animal, let the World judge: and this comes of despising Logick. Let us now see whether his Divinity be better than his Philosophy. After this hog-shearing, where we have had so loud a cry and no wool, we will if we can pick out a little sense; The thing he aims at proving is, that Bishops are not superiour in Order to Priests; a thing, by the way, directly contrary to the Liturgy of the Church, and thereby the Law of the Land: but yet they are superiour in *Commission*, and by virtue of that can govern, exercise the power of the Keys, and ordain Priests and Deacons, which Priests, ordinarily speaking, may not. Well, if this *Commission* were from Heaven, and stand upon that Scripture Basis, of *As my Father sent me, so send I you*, by virtue whereof the Bishops, during the first ten Persecutions, governed their Flocks in despite of all Secular opposition, and retaining part of their administration to themselves, disposed of some to Priests and Deacons; which is as notorious in fact, as any thing in the world: The Bishops may do tolerably well, with this new word *Commission*, instead of the old of *Order*. Especially, since in the close it is confest by our Author: that *in this order the Apostles left the Church at their death, and in this order their Successors continued it (as in duty sure they ought) from time to time near 1500 years without any interruption wherefore for any to alter this way of Government, or to take upon them to ordain, not being chosen this way to it, they would be guilty of great rashness and high presumption.* Nor will it be in my Authors power to kick all this down again, as he endeavours in the following period, by making the orders given by Priests though irregular, yet firm and valid; for if this power be from Heaven, and separate from all Secular Authority, as to its Nature and Original; though limited by it in its Exercise and Application: no man upon any pretence can take

take this honour to himself or confer it on others, but they who were called of God as was *Aaron*.

But let us see how well our Author confutes the distinction of Order between Bishops and Priests? *Tis ridiculous*, says he, *that the Priesthood which is capable to do the greatest things, to Consecrate the Souls of men by Baptism and the Lords Supper, yet forsooth cannot Consecrate Oil and Cups?* I desire to know whether a Deacon cannot Consecrate the Souls of men by Baptism and the Preaching of the Gospel, or if they can, whether they are of the same Order with Priests? Or whether a Judge who has power of Awarding Life or Death which is the greatest thing, may also make a Knight which is a less, and if therefore a Judge and a King be of the same Order? This word ridiculous is very unlucky, and commonly returns on him who is most busie with it; But since we are fallen upon the instance of a King, for farther illustration of this matter let us consider the Monarchs of the *East*, who permitted the whole Administration of their Affairs to their Favorites, as we read of *Pharaoh* that he pulled his Ring off his hand and said to *Joseph*, without thee no man shall lift up his hand or foot in all the Land of *Egypt*, and according to thy word shall all my People be Ruled; but for all this *Pharaoh* and this his Minister of State were not of the same Order; for in the Throne he was greater then he. Though the King had stript himself of the whole Execution of his Power, and put it into the hand of his Favorite, yet so long as the Origination of it continued with him, he was as absolute, and the other as subject as ever. *Tis true* the Bishops power is in itself Subordinate and Ministerial; he must not Lord it over the Inheritance of God, but as to the dispensing of it to the inferior Orders, the Parallel will hold; they all Act in Subordination and dependence upon him. *Ἄνδ' τῷ Ἐπισκόπῳ μόνον ἀγέρται ὑμεῖς*, saies *Ignatius*. No Priest or Deacon for several Centuries ever did it without particular leave given by the Bishop, nay the Lecter or Reader did not so much as Read

the Gospel till first he had brought the Book to the Bishop, and had his permission to go to the Ambo or Reading Pulpit with it; and though the Licence with us be not now every day renewed, yet the dependence is still owned in the very Form of our Ordination, where the Bishop says to the person Ordained, take thou Authority to Read the Gospel in the Church of God, and Preach the same when thou art thereunto Licenced by the Bishop himself. But a farther Argument is taken from the *promiscuous use of the name of Bishop and Presbyter*, to prove they are of the same Order, which sure is one of feeblest ways of proving any thing; the whole force of it amounts to this, St. *Peter* and St. *John* call themselves Presbyters, but were also Bishops; therefore Presbyters and Bishops are all one: which is as much as to say, that his Majesty is King of *Great Britain* and Knight of the Garter; therefore to be King of *Great Britain* and Knight of the Garter is all one. Nay St. *Paul* styles himself a Deacon, as well as an Apostle; therefore to be a Deacon and an Apostle is all one, but if our Author be not satisfied with this, let him Read the Thirteenth Chapter of the most Learned Bishop of *Chester's Vindicia Ignatii* and he will see how accurate the first Christian Writers were in distinguishing the three Orders of Bishop, Deacon and Priest.

We will go on and attend him in his Talent of Book Learning, wherein he has been hitherto so unfortunate, and see how in his following expedition he mends the matter. And here he tells us that *Aerius* (whom, by the way, he constantly calls *Arius*) was not a Heretick upon the account of his introducing a parity between Bishops and Priests, but only for being an *Arian*. That is, *Epiphanius* made a List not of several Heresies, but a Catalogue of several *Arians*: and the 69. Heresie being assigned to *Arius*, it passes the Muster again in the 75. Heresie under the auspice of *Aerius*. It is agreed on all hands that discontent made *Aerius* a Heretick, for that *Eustathius* whom he thought a worse man than himself, was preferred before him: and being

being in power, though formerly his particular Friend, considered him no farther then to make him Master of an Alms-house. We are then to believe that out of discontent *Aerius* turned *Arian*; but as ill luck would have it, *Eusebium* was of that Sect, and if he had a mind to quarrel with him, nothing could have been so proper, as to have turned Orthodox in spight. It is manifest he was originally an *Arian*, and the prime part of his Heresie was what his malice naturally dictated, and all Writers agree it to be
 Ἦν αὐτῷ λόγῳ ὁ μακρότης μᾶλλον ἢ περ καταστάσεως ἀνθρωπίνης, ὁ φησὶ ὅτι ἔστιν Ἐπίσκοπος ὁ ὡς Πρεσβύτερος; ὅθεν διαλλάττει οὗτος τὴν μίαν γὰρ ἔστι πάξις, ὁ μίαν φησὶ κίμην, ὁ ἐν ἀξίωμα, &c. “He entertained a mad opinion, beyond what a man would receive, saying, What is a Bishop better than a Priest? There is no difference between them; there is but one order, the same honour and dignity.

Since our Authors Greek reading fares no better, let us go on to consider his Latine; and there is no missing St. *Jeroms* Epistle to *Evagrius*, which is so clear in the point, that without more ado it converted our Author, who it seems was once an Episcopal man, into that errant Presbyterian that now he is. Withal it makes him wonder, and if the Reader understand Latine, he will wonder to see men have the confidence to quote any thing out of it for the distinction between Episcopacy and Presbytery. Well, I have read over the Epistle, and, as our Author says, wonder, but it is at his great confidence to say, that there is nothing to be met with in it, to found a distinction between Episcopacy and Presbytery; when as he expressly reserves the power of Ordination peculiarly to the Bishops, which is the point chiefly contested between the Assertors of Episcopacy and Patrons of Presbyterian parity. As to the second desire, that the Reader should observe the various fate of St. *Jerom* and *Aerius*, that the one is reviled as an Heretick, the other passes for a Saint: I will satisfy my Author in that particular, and shew him a plain reason for it. *Aerius* set himself against the Apostolical Government by Bishops, dogmatized, and separated himself from the Church:

Church: St. Jerom always obeyed his Governours, and remained in Communion with them, upon other occasions exprest his opinion in behalf of their Authority: And here only in a private Epistle to a Friend, and that a very short one, being scandalized at an unseasonable opinion, which pretended Deacons to be equal in dignity to Priests; as it is usual in such cases, he depresses what he can the Order of Deacons, and exalts to his utmost that of Priests, in the mean time does not so much as attempt to prove any thing more than barely saying, *Quid aliud facit Episcopus excepta Ordinatione quod non facit Presbyter?* “What does a Bishop more than a Presbyter besides Ordaining? And then reckoning up several actions common to both. Our kind-hearted Author hereupon tells us, that this presently converted him; nay, as if this good nature of his were as meritorious as grace, he thereupon assures himself, *that great is his reward in heaven.* Our man of learning with his accustomed dexterity and confidence runs down the business of *Colluthus* his Ordination of Priests, and pities poor *Bishop Hall* for going about to prove from thence, that Presbyters were not capable to Ordain. How slightly soever our Author thinks of the matter, *Socrates* in the first Book of his History puts it under the blackest Character. *Πράγμα ὑπὲρ πολλῶν θανάτων ἄξιον, ἔς ὃδ' ἂν ποτε ἱεροσύνης πλῆθὺν τὸ τῷ Πρεσβυτέρῳ ὄνομα ἑαυτῷ καθέμενον, τὰ ἱερῶς πράττειν ἐτόλμων.* “He privately adventured on an action worthy of many deaths, who, having never been ordained a Priest, did those things which belonged to the Function of a Priest. This you are to know was said of *Ischryus* who had as good Orders as *Colluthus* a Priest could give him, but yet antecedently to the Decree of the Council of *Alexandria*, is declared never to have been ordained a Priest. Let up now see why the old man was so much to be pitied, *because he had quite forgot that the famous Council of Nice, consisting of above three hundred Bishops, had made a Canon, wherein they declare, that if any Bishop should Ordain any of the Clergy belonging to another Bishops Diocese, without consent and leave had of that Bishop to whose Diocese they did belong, their Ordination should*

should be null. You see the irregular Ordination of a Bishop is as null as the irregular Ordination of a Presbyter: Therefore the irregular Bishop, and the irregular Presbyter are of the same Order, of the same Authority; neither able to Ordain. Our Author, according to his usual Sagacity, knows no difference betwixt an Act that is null and void in it self, and an Act voided by Law. There is no question but Bishops, and Priests, and Deacons for their Crimes may be degraded and deposed, but that is not the same thing with the never having been Bishops, Priests, or Deacons. The Council of *Alexandria* declared the Ordinations of *Colluthus* to have been void *ab initio*, that of *Nice* voids those that are irregular. Surely these are very different matters. That the invalidity of the Ordination in the later case was of this kind, that is, made invalid by way of Penalty and Sentence, we may learn from the thirty fifth Apostolick Canon; by which both *Zonaras* and *Balsamon* interpret this of *Nice*, who decree that in case of ordaining in anothers Diocess the Bishop *κατασπείδω* & αὐτοὺς & ἱεροτόμων, "Both he be deposed and they who were ordained by him. And truly if they were to be deposed, it is plain the Orders were in themselves valid; and it is unquestionable that the Ordaining Bishops were so: which is not to be said, and can never be proved of a mere Presbyters. And therefore the Triumph which is added here of *dashing out the indelible Character*, or that the *Line of a Diocess is a Conjurers Circle*, might very fairly have been laid aside. And I appeal to the Reader, and more than hope he will see how no proofs are brought for this Identity and parity of Order; no Scripture, no Primitive Council, no general consent of Primitive Doctors and Fathers; that he is perfectly out in every thing he avers, and therefore for his poor judgment he may do well to keep it to himself, and probably his Judgment is so poor because he himself is rich. He in likelihood has employed his time in Secular Concerns, which had it been spent in Study, would have rescued him from such gross misadventures, as he at every turn incurs.

But

But though the matter stand thus plain before us; yet since our Author has had the confidence to cite the Council of *Nice* in proof of the nullity of irregular Orders; to shew with greater evidence his perpetual ignorance and mistake, I will throw in for vantage the proceeding of this very Council in the Case of *Meletius*, who had usurpt upon the rights of *Peter* Patriarch of *Alexandria*; in the point here contested of Ordaining within his Diocese; the words of *Theodore* are τὰς διαφερούσας ἀπὸ χειροτονίας ἀφάρτασι. "He invaded the Ordinations belonging to the other. Now the Council decreed herein, that *Meletius* should be suspended from the future exercise of his function, and retain Ψιδὸν ὄνομα ἐπισκοπῆς, τῷ δ' λαίτῳ, μόνον ἐν καμῇ χειροτονεῖν & λειτουργεῖν, "the bare name of a Bishop, but do no Act of his Function either in the City or Villages; but the Orders conferred by him were as to their intrinsic validity ratified and acknowledged. Τὸ δ' ἤδη παρ' αὐτοῦ καταρτισθεὶς χοινοῦν & λειτουργεῖν, δόξυτοῦν δ' τὰς πηγὰς τοῦ ἐκείνου κληροῦ, & περιουσία κληρικῶν, "those already Ordained should Communicate and Officiate, but come after the Clergy of each Church and Parish. 'Tis to be wondered at, how this man who seems to have always lived in a hollow Tree, came to have heard by chance that there was once such a thing in the World, as the Council of *Nice*.

To the Chapter of Deacons.

OUR Author is resolved on all occasions to shew that he thinks himself wiser then both the Church and State, and therefore in defiance unto both, he attempts to prove that Deaconship is not Holy Orders; and to bring about so generous a design, he makes nothing of steering a point with the Scripture, since 'tis so unkind as to stand in his way. It so happen'd that *Petavius* discoursing of Deacons had said, what the Contents of our English Bibles, and Commentators generally agree in, that *Philip* the Deacon Preacht, did Miracles, and Baptiz'd, and Con-

verted

verted the City of *Samaria*, and that the History describ'd *Act. 8.* belongs to him. Now our Author is better advis'd, and assures us, *that this more probably was Philip the Apostle.* St. *Luke*, 'tis true, tells us that upon the Persecution against *Stephen*, several of the Brethren went through all the Regions of *Judea* and *Samaria*, except the Apostles; 'tis says our Author, a gross mistake, the Apostles are not to be excepted; but *Philip* the Apostle, and not the Deacon went about these Regions. Having thus happily entred himself into the Lists, he goes on and tells us, that *the first we shall find of Deacons Officiating in Spiritual matters, is in Justin Martyr*: A modest man would think that to be competent Antiquity: but it seems to him that though in *Greece* it was then receiv'd; it was not so in *Africa*; for Tertullian says that the Christians received the Sacrament only from the hand of the President or Bishop, that is, what I said even now out of *Ignatius*, that neither this, nor any other sacred Office was to be done *ἀνευ Ἐπισκόπου γνώμης*, "without the knowledge or consent of the Bishop; Which thing our Author himself hereafter confesses. And sure when the Bishop Consecrated both Elements, and with his own hand delivered the Bread immediatly to every Communicant, and gave the Cup to the Deacon to distribute after him: 'twill be a great truth to say that the Eucharist was only received from the hands of the Bishop. But 'tis a fatal thing to be haunted by ill luck; what will become of our Authors Profound Learning, if it should appear that the Deacon did distribute the Cup in *Africa*? St. *Cyprian* will, I hope, be taken for a competent Witness in the Case, who says in his Book *de Lapsis*. *Ubi solennibus adimpletis calicem Diaconus offerre presentibus cepit.* "When the other solemnities were performed, and the Deacon distributed the Cup to them who were present. Nay if St. *Cyprian* be to be believed, he utterly confounds all our Authors pretensions at once, saying that *Diaconus non defuit sacerdotalis vigor*, "there was not wanting to the Deacons sacerdotal power, *Ep. 13.* allowing them somewhat of Priestly jurisdiction: and in

the twelfth Epistle, giving them power to release from the Censures of the Church, *In articulo mortis, si Presbyter repertus non fuerit, & urgere exitus cæperit, apud Diaconum quoque exomologesis facere delicti sui possint, ut manu ejus in penitentia imposita, veniant ad Dominum cum pace.* “ If a Priest be not
 “ to be found, and death draw on, they may make their
 “ Exomologesis or Confession before the Deacon, that
 “ hands being laid on them as Penitents, they may go to
 “ the Lord in peace.

Our Author proceeds, and according to his wont, shews his Learning backward ; and quoting an Epistle of St. Ignatius ad Tralli (Trallianos I presume he means) finds, and often laments that learned men go on in a Track, one after another, and some through inadvertency, some through partiality take many passages of ancient Authors quite different from their meaning. One would now expect some eminent discovery. The fault in short is this, that our Authors good Friend *Vedelius*, Bishop *Usher*, Doctor *Vossius*, *Cotellerius*, and as many others as have put forth *Ignatius*, have gone on in a Track, and falsely translated these words, Δεῖ δὲ τοῖς Διακόνους ὄντας μυστηρίων Ἰησοῦ Χριστοῦ, καὶ πάντα τέκνον πᾶν ἀποκτείνεῖν ὃ δὲ βραχυτέρων ἐποταῶν εἰσιν Διακονοί, ἀλλ’ Ἐκκλησίας Θεοῦ ὁμολογεῖται. “ The Deacons, being Ministers of Jesus Christ, are to be honoured,
 “ for they are not the Ministers of meats and drinks, but
 “ of the Church, and Servants of God ; to run thus, and to concern Deacons, when as indeed the words are meant of Priests. *whoever first translated this Epistle of Ignatius*, says our Author, *sure this fancy of Deacons ran much in his head, otherwise he could never have found them here, for it is evident the word Diaconus, in this place, relates to the Presbytery newly before mentioned, &c.* Well, we hear what you say, but for all this are convinced you are infinitely mistaken : And are sure that Doctor *Isaac Vossius*, whatever became of other learned men, did not go in a Track, nor by inadvertency nor prejudice (his Education, if he could have been seduced, leading him the other way) but considered the place very particularly, and adhering to the Translation which you despise, concludes,

cludes, *Miror Antiochum qui sermone 124. hac Ignatii citat, ita illa mutasse, ut id quod de Diaconis hic dicitur, Presbyteris attribuat, modo apud illam locus sit integer, nec aliqua exciderint verba.* "I wonder *Antiochus*, who in his 124. Sermon quotes these "words, should so change them, that what is here said of "Deacons, should by him be attributed to Priests, if so be "the place be entire with him, and some words not left out. Well, but our Author has a mind that we should see the utmost of his skill: *I do the more wonder at the Interpreters mistake in this place, because by the following words Ignatius here excludes the specifical Deacons, saying not the Ministers of meat and drink.* To see the wonderful difference of mens understandings; the most learned Doctor *Isaac Vossius*, from these very words concludes the beforegoing Period was meant of Deacons (*specific Deacons*, since they must be called so) from whence our Demonstrator proves they could not be spoke of them. It is, it seems, a Scheme of speech which our Author never met with, to say of things or persons you are not this or this, but that; when they are remarkably more that, than this or this. Thus God says to *Samuel* of the People, who, complaining of his Old Age, and evil Sons, desired a King: that they had not rejected *Samuel*, but God. All men of common sense know very well the meaning to be, that though they rejected the Prophet, that was not to come into account with the Rebellion and Insolence wherein they rejected the Lord himself. Though God commanded Sacrifices under the Law, he expressly says, he will have no Sacrifice, and delights not in, nay, abhors Burnt Offerings; yet this did not abrogate the Divine Institution, nor make Almighty God contradict himself. So St. *Paul* advises *Philemon* to receive *Onesimus* his servant, not now as a servant, but above a servant, a Brother beloved: By which words it is not to be inferred, that he should presently manumit him, but use him with kindness. But vanity and ignorance are most incommodiously quartered together; our Author had a mind to shew his reading, and pick a quarrel with the Translator of a Father: And then, no doubt, he

must be a Giant in Learning, and list himself with those Worthies that have slain their thousands. But such is our Authors hard Fate that this inconsiderable Period which is here so earnestly controuled, is said unquestionably almost in every Page of this holy Martyr. So that should he have happened once in his life to be in the right, he had gained nothing to his cause; and besides, from hence it is morally certain that our Author never read a Page together in *Ignatius*. In this very short Epistle within twenty Lines he says, *χρῆς Ἐποκόπῃ, ἔπρεσβυτέρῳ, ἔ διακόνῳ πρέσβειαν π, ὅτι ἡ καθα-
ρος ἔστιν τῇ συνεδήσει;* "He that does any thing without the
"Bishop, the Presbyter, and Deacon, has not a pure con-
"science. In that to the *Magnesians*, Παλαιῶ ἐν ὑμνοῖσι
πάντα πρέσβειαν, ὡς καθημένῳ τῷ Ἐποκόπῃ εἰς τύπον Θεοῦ, ἔπρ
πρεσβυτέρῳ εἰς τύπον συνεδρίου ἔπρ Ἀποστόλων, ἔπρ διακόνων, ἔπρ
ἡμῖν γλυκυτάτων πεπρωμένων διακονίαν Ἰησοῦ Χριστοῦ." I admo-
"nish you to do all things in love, the Bishop presiding in the
"place of God, the Presbyters in the place of the Col-
"ledge of the Apostles, and the Deacons most dearly be-
"loved of me, as those who are trusted with the Mini-
"stry of Jesus Christ. In that to the *Philadelphians*, Τῷ
Ἐποκόπῳ ἀρεσκῇ, ἔ τῷ Πρεσβυτέρῳ, ἔ Διακόνῳ. "Hearken
"to the Bishop, the Presbytery, and the Deacons. And
again in the same Epistle he adds, that it is necessary *χρεοῖ
ἵνα ᾖ Διάκονος εἰς τὴν πρεσβείαν ἐκεῖ Θεοῦ πρεσβείαν.* "To or-
"dain there a Deacon to perform the Embassie of God.
One would think this a competent instance of our Authors
intolerable insolence, without any regard of truth or in-
genuity to dictate to the World, and pretend to correct
learned men. But this is not all; it is manifest he never
read this very Period, whose Translation he pretends to
mend: For so *Ignatius* goes on there, Ὁμοίως πάντες ἐν ἡμετέρω-
ν τῶν Διακόνων, ὡς Ἰησοῦν Χριστόν, ὡς ἔ τῷ Ἐποκόπῳ, ὅτι ἡ τῷ
πατρὶ. τῶν δὲ Πρεσβυτέρων ὡς συνέδριον Θεοῦ, ἔ ὡς σύνταγμα ἔπρ Ἀπο-
στόλων χρῆς τύπων ἐκκλησία ἡ καλεῖται. "So in like manner
"let all reverence the Deacon as Jesus Christ, and also the
"Bishop as the Son of the Father; and the Presbyters as
"God's

“ God’s Senat, and band of the Apostles ; without these
 “ the Church is not call’d. But we have not done yet. Be-
 hold a piece of ignorance and impudence more inexcusable
 than the former ; Poor *Petavins* is taken to task for calling
 St. *Laurence* a Deacon ; which many hundreds before him
 had very innocently done ; and generally all that ever
 heard of his Grediron, or his Martyrdom, or indeed the oc-
 casion of it, are of his mind ; but it is our Authors privi-
 ledge to be ignorant of what every body else is informed of.
 Now in the present misadventure he attempts a greater Ma-
 stery, goes beyond, and surpasses himself : For in that very
 place of St. *Ambrose* which he cites ; the direct contrary of
 what he goes about to prove is *in terminis* asserted. For that
 speech of St. *Laurence*, which he recapitulates, and says, *That*
is plainly shews St. Laurence was a Priest, not a bare Deacon, tells
 us that he was a Deacon. The words are *Lib. 1. Offic. cap. 41.*
Quo progredieris sine filio Pater ? Quò Sacerdos sancte sine Diacono
tuo properas ? &c. “ O my Father (speaking to his Bishop go-
 “ ing to Martyrdom) whither go you without your Son ?
 “ O holy Priest whither hasten you without your Deacon ?
 Had it not been better for our Author to have said St. *Lau-*
rence was an Arch-deacon to credit the matter ; or a Dea-
 con Cardinal ; than thus run counter to the words he
 alledged ? Unless a man owed himself a shame, and was in
 dread he should never make honest payment, and therefore
 on purpose spoke what he knew most absurd, mere chance
 could never fall out so unluckily, that he should not in a
 whole Book make one true recital of an Author, or mat-
 ter of Fact, as he has done. Yet after all this, as if he had
 come off with mighty credit, he closes his Chapter with a
quod erat demonstrandum : So I leave, says he, the Deacons to
 their proper Office of serving of Tables, not finding in Scripture
 any thing more belonging to them. Our Author having thus ra-
 ken away, we will expect the next Course, where it is to be
 hoped we shall be better served ; and that at last the Ban-
 quet will make amends for the very ill Fare we have hither-
 to had.

To the Chapter of Church-Government.

Our Author has a dexterity of talking extravagantly of several weighty subjects, and this he calls *handling* them: which being beyond his strength, he heaves them to as much purpose as if they were Timber; and thinks he has acquitted himself to admiration. Having therefore *handled* the former points; that is, talkt beyond all aim and measure Foolishly; Now he says he comes to the *Authority of Bishops to Govern as well as to Ordain*. And truly if they are to do one, as they are on his principle, to do the other, their Authority is likely to signifie but little; being shared by every the meanest Priest. But the outcry is, that *the Power of the Keys is left to Chancellors, Lay-men who have no more capacity to Sentence or Absolve a sinner, then to dissolve the Heaven and the Earth, and make a new Heaven and an Earth*. And thus the good man runs on like an Horse with an empty Cart, exceedingly pleased with the ratling of the Wheels, and gingling of the Bells; but he never considers that all the proceedings of Chancellors in the Bishops Court are in consequence of the Canons of the Church which are the Decrees of Bishops Authoritatively met together, which have defined such and such Doctrines Heretical, such and such actions punishable with Suspension, Sequestration or Deprivation, and the like: Now all that the Chancellor has to do, is to examine the matter of Fact, take the allegations and proofs, and apply the Sanction of the Law to them. But where that extends to the use of the Keys, that is reserved to them who by Christs Institution are trusted therewith. And if Dr. Duck did do an ill thing, the fault lies at his door; and tis well if in this profligate age a single instance can only be pitcht upon. We have, blessed be God, a great happiness in the protection of our Municipal Laws, none in the World being a firmer Bulwark of the Princes Rights and Peoples Liberties; but should every clamorous Person be hearkned to,

to, who complains of the exorbitance of a Judge, (when if the matter be truly examined, probably the ground of the dislike, is that he did his duty) we should soon tear out one anothers Throats; and every mans hand would be against his Brother. We know the worst of our present Constitution, and desire not the hazards of a change.

To the Chapter of Confirmation.

THis Chapter begins with a liberal Confession, *that Confirmation or some such thing is necessary*: but tis a little odd that in a matter which approaches to the being necessary, a loose *succedaneum* of some such thing, should be sufficient. Our Author like a true Empiric, in all cases strives to bring in *aliquid Nostri*, his preparation of the Medicin will render it Sovereign: but the old, known, and received Forms must by no means be taken. Having then made up a narrative of matter of Fact, jumbling, as his way is, true and false together, his first objection against Confirmation as it now stands is. *That it is not possible for a Bishop of so large a Diocese as some of ours are, some extended Three or Four score Miles, many Forty or Fifty, Personally to Confirm half the Youth in a Diocese, if he duly examine each one as is fit and necessary. We see how this is performed in their Triennial Visitations.* Having put in a Caveat in behalf of the present Constitution, and minded my Author again of his promise to the Lords and Commons, that there was not a word in his Book against the known Laws; I cannot but reflect, that surely he lives in a Country where the Bishop is not over-diligent in his duty, else he would never make the task to be so impossible, unless the Bishop never comes into his Diocese, or never stir any where abroad in it: surely a very little contrivance with the diligence of the Ministers would make it possible both for the Bishop and Youth to meet together without much trouble to either. There is no doubt if the affair be adjourned over to the Triennial Visitation, 'tis not likely to be well done: but

as this ought not to be the course ; so thanks be to God it is not. The next inconvenience in the present Constitution is the disability of the Curat to fit for Confirmation ; and the little credit to be given, *when he assures the Bishop when he presents the Children, that they are fully instructed for it :* and therefore he concludes it necessary, *to appoint some discreet conscientious Ministers in the several Circuits to examine and Licence for the Lords Table :* for he passes it for granted, *that Confirmation is no Sacrament, and if it were, why may not Priests, not Bishops perform it ?* Well but suppose these discreet conscientious Ministers, that are to supply the place of the Parochial ones, should not be better qualified, be more discreet or conscientious than them, as it may very probably happen ; tis plain they cannot have those opportunities either to instruct the Youth of each Parish, or know they are instructed, as the local Minister is furnished with ; but then farther is it likely that the several Parochial Ministers will readily admit their neighbour Minister, whom they may reasonably think not much wiser or better than themselves to meddle in their Cures, or that the people will be contented with it ? Will not animosities and quarrels, and contempt of the duty certainly follow ? As to the lawfulness of Priests and not Bishops performing it, upon the supposal that Priests and Bishops are the same thing, and that Priests may Ordain, which is the Doctrine taught in one of the preceding Chapters, this of Priests Confirming may reasonably enough be admitted : but the falseness of that imagination being abundantly evident, the absurdity of this will necessarily follow. And therefore notwithstanding our Authors project, Bishops may do well to go on in the Execution of their Duty in this most Ancient and Useful Right, in which from the first Planting of the Gospel to this moment, they have been in possession. They who of late invaded the power of Ordaining Priests, having been so modest yet, as not to usurp this part of the Episcopal Office.

As to the expedients proposed about framing additions to the Catechism, making Paraphrases on the Lords Prayer and Ten Commandments, regulating the Ministers way of Catechising, and enforcing Parents and Masters to bring their young people to be Catechis'd, I shall only say that if every body in the Nation, who is as wise as our Author, shall be allow'd to make Models for the Church, we shall have almost as many Schemes of Government, as there are persons to be Governed. In the mean time we will take old Cato's rule, and be well pleased with the State of things as it stands at present.

The next pique is at the bounds of each Bishops Diocesi, and having told a Story of Rome, Constantinople, Alexandria, Antioch, Ferusalem, Ephesus, Corinth, and Philippi, which sound big and look well in the Inventory, he informs us that partly by great distances of Citys, partly by the favour of former Princes, several Towns being cast into one Diocesi they became so large as tis impossible any one Bishop should have a sufficient inspection into them; the Bishop knows not the names nor faces of half a quarter of them, much less their behavior; he may have as well a part of France in his Diocesi to Govern. Our Author never considers where his argument will light, is it possible to Govern three Kingdoms, nay are they therefore happy, because entire and under one Government? Is there no manner of need why the Prince should know the names of the Aldermen in his Metropolis, much less of the people in his Dominions? and is it so impossible a thing to comprehend all the necessary interests of an Episcopal Diocesi? The truth is, our Author would make every Parish-Priest a Bishop, and then the Diocesi will be little enough; and the Revenues of the Bishops will be needless things, and as he says, *the greedy Harpyes will readily make use of his zealous intentions*: but I pray let us make a parallel to his Ecclesiastial Policy in the Civil State. There are a certain sort of men made Judges in the several Circuits of England, which Circuits are many of them Fifty, Sixty, an Hundred or more Miles in Compass, they know not the name or faces of half or a quarter of them, much less of their behavior,

they may as well have a part of France in their Circuit : Were it not therefore better that every Lord of the Leet should distribute Justice in the Precincts of his Mannor, that no man should be at the expence of seeing Councel, taking out Writs, or of going to the Shire-Town, or vamping upon the Hoof with shooes at back to *westminster-Hall* ; but the Steward of the Court who knows the name and face and concern of every one should dispatch all things, and doubtless this would make a happy World. The Parish would quickly find the advantage of this new Scheme; to have their Estates, their Lives and Fortunes in the hand of a little Attourney, and be all together by the Ears, and have none to part them, but him whose interest it is to set them on. I need not set down the Moral. Thus mad is the Ecclesiastical Policy of our Divinity-Common-Wealthsman, tis no very good account of time to write an *Utopia*, a Politick Romance ; but to play tricks in Holy things, and set on foot a Christian *Oceana*, is an unpardonable fault. But our Author proceeds to consider a second abuse in Church Government, which is exempt Jurisdictions. Whatever a man thought of the unexpedience of any thing Establish'd by Law, surely in good manners he should not give it ill Language, and call it an abuse, while it stood so Authorized and supported. Which should be done especially by him who has past a solemn promise of not speaking a word against the known Laws of the Land. But of all men in the World our Author, whose business it is to make all the Parishes in *England* peculiars, and have them straitned to the narrow limits, which admit the *knowing every name and face*, should not speak against exempt Jurisdictions ; for if the whole Nation were so Cantoned out, and we had ten thousand Bishops in *England*, we had exactly the Scheme which he recommends, and at the same time complains of. It seems my Author may freely write against what is Establish'd in Church and State, as having obtained an exempt Jurisdiction from the power of both : and to say incoherent things and such as none else would say, contradictory not only

only of all sober men who have wrote before him, but of himself also, is his Peculiar; And so I leave him.

To the Charitable Admonition.

THis being address'd to Nonconformists, I must confess does not properly concern me, and is for the most part so well said, that I heartily wish it had been the whole Book: but since our Author finds himself oblig'd in Charity, to think of those misguided men, I must also upon the same Principle, have a concern for him; and earnestly beg him to revise what he has wrote, and see whether he has laid Grounds in it for Socinianism, and all kinds of Separation: and whether he has done a good Office to Religion, to supply Dissenters, whom he declares to be oblig'd to obey the Government, with all the Arguments he could think of, to palliate and countenance their disobedience. Surely men are not too well principled, that it should be needful to unsettle them; nor too dutiful, that there should be reason to check them in their duty: And in a time when, as my Author himself observes, *Separation, and many following Divisions, have caus'd many to abhor the Church, and turn to Popery*: It is obvious to apprehend that the doing every thing which the maddest Separatist requires, and making Religion slovenly and despicable, will not probably retain those who are tempted to Popery, or recover them who have revolted to it. It will not be enough to say, that the Book has every where in it sober and honest truths; for so has the *Cracovian Catechism*, and the *Alcoran*; nay, there is scarce any Conjuring Book which does not for the greatest part consist of devout and godly Prayers, We are told by our Author, *That it is above two years since he had these thoughts, in which time he has read and conferr'd all he could to discover if he were in an Error; but, for all he could yet meet with, does not find it so, but hopes all he says is truth, and that it may be useful to the Publick, in this present conjuncture of Affairs.* Now this is certainly a most prodigious thing, that a man in two years time

time should never be once awake, converse with any good Book, or man of Sense; or have the least reflexion upon what is either truth or expedience. I never read this Book entirely over more than once; nor have I had much leisure to consider it: And yet I presume any indifferent Reader will see what gross misadventures have been detected by me, and probably himself will discover many more: For, in earnest, there are every where such blots that one can hardly avoid the hitting; such flaws in Discourse, that there needs nopicking of holes, or looking narrowly to find the Incoherence, but the passage lies wide open, and one may fairly drive a Cart and Horses thorow. Upon the whole matter I cannot but conclude, that Pride or Discontent, or some other very prevalent Passion has here interposed: For what else should make a man think himself fit to reverse the established Constitution of the Church, and give his advice to the Parliament, how they should evacuate all their Laws? What should make him almost in every Period contradict himself; pretend to the knowledge of Antiquity and Religion, rant against Universities, disparage the Ministers and Preaching of the Nation: and at the same time discover the grossest ignorance and inconsideration as is imaginable? And amidst all this acknowledge obligations to Submission and Conformity, and whatever he has spoke against: And after two years deliberation not to see that which is evident at the first glance, to any one that has but half an eye? All this, I say, must be the Product of some one, or many violent Passions. Let my Author seriously consider where this Fundamental mischief lies; search his own heart, and desire the Searcher of hearts to discover it to him. He says, he has *Fasted and Prayed*, let him do so again; but with Humility and Earnestness; and the good God be merciful to him.

F I N I S.

REFLECTIONS

Concerning the

ORIGINAL

OF

GOVERNMENT,

- Upon {
- I. Aristotle's *Politiques*.
 - II. Mr. Hobs's *Leviathan*.
 - III. Mr. Milton *against* Salmasius.
 - IV. H. Grotius *De Jure Belli*.
 - V. Mr. Hunton's *Treatise of Monarchy*.
 - VI. *Another Treatise of Monarchy*, by a nameless Author.

Arist. Pol. Lib. 4.

Ἡ πρώτη πολιτεία ἐν τοῖς Ἕλλησιν ἐγγέτο μὲν ταῖς βασιλείαις ὅκ τ' πολεμούντων.



L O N D O N,
Printed in the Year MDCLXXIX.

THE
ANARCHY
OF A
LIMITED
OR MIXED
Monarchy.

OR,

A Succinct Examination of the Fundamentals of *Monarchy*, both in this and other Kingdoms, as well about the Right of Power in Kings, as of the Original or Natural Liberty of the People:

A Question never yet Disputed, though most necessary in these Times.

Lucan. Lib. 3.

LIBERTAS (——) Populi quem Regna coercent
Libertate Perit:——

——Neque enim Libertas gratior ulla est
Quàm Domino servire bono——

Claudian.

L O N D O N,
Printed in the Year MDCLXXIX.



T H E

Free-holders

GRAND-INQUEST

Touching

Our Sovereign Lord the *King*,
and His *Parliament*,

EVery Free-holder that hath a Voice in the Election of Knights, Citizens or Burgeses for the Parliament, ought to know with what Power he trusts those whom the chooseth, because such Trust is the Foundation of the Power of the House of Commons.

A Writ from the King to the Sheriff of the County, is that which gives Authority and Commission for the Free-holders to make their Election at the next County-Court-day after the Receipt of the Writ; and in the Writ there is also expressed the Duty and Power of the Knights, Citizens and Burgeses that are there elected.

B

Tho

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The means to know what Trust, or Authority the Country or Free-holders confer, or bestow by their Election, is in this, as in other like Cases, to have an eye to the words of the Commission, or Writ it self: thereby it may be seen whether that which the House of Commons doth act be within the Limit of their Commission: greater or other Trust than is comprised in the Body of the Writ, the Free-holders do not, or cannot give if they obey the Writ: the Writ being Latine, and not extant in English, few Free-holders understand it, and fewer observe it; I have rendred it in Latine and English.

Rex Vicecomiti salut'. &c.

Quia de Advisamento & Assensu Concilii nostri pro quibusdam arduis & urgentibus Negotiis, Nos, statum, & defensionem regni nostri Anglie, & Ecclesie Anglicane concernen', quoddam Parliamentum nostrum apud Civitatem nostram West. duodecimo die Novembris prox. futur' teneri ordinavimus, & ibid. cum Prelatis Magnatibus & Proceribus dicti regni nostri colloquium habere & tract': Tibi precipimus firmiter injungentes quod facta proclam. in prox. comitat' tuo post receptionem hujus brevis nostri tenend' die & loco predicti. duos milit' gladiis cinct' magis idoneos & discretos comit' predicti, & de qualib. civitate com' illius duos Cives, & de quolibet Burgo duos Burgenses de discretior' & magis sufficientibus libere & indifferenter per illos qui proclam' hujusmodi interfuerint juxta formam statutorum inde edit' & provis' eligi, & nomina eorundem milit', civium & Burgensium, sic electorum in quibusdam indentur' inter te & illos qui hujusmodi election' interfuerint inde conficiend'

enā sive hujusmodi electi presentes fuerint vel absentes,
inſeri : eſque ad dictū diem & locum venire fac. Ita
quod iidem milites plenam & ſufficientem poteſtatem pro
ſe & communitate comit' prædicti, ac dicti Cives & Bur-
genſes pro ſe & communitat' Civitatum & Burgorum præ-
dictorum diviſim ab ipſis habeant, ad faciendum & conſen-
tiendum hiſ que tunc ibid' de communi Conſilio dicti reg.
noſtri (ſavente Deo) contigerint ordinari ſuper negotiis
ante dictis : Ita quod pro defectu poteſtatis hujusmodi,
ſeu propter improvidam electionem milit' civium aut Bur-
genſium prædictorum, dicta negotia infecta non remaneant
quoviſmodo. Nolumus autem quod tu nec aliquis alius
vic' dicti reg. noſtri aliqualiſiter ſit electus. Es electionem
illam in pleno comitatu factam, diſtincte & aperte ſub
ſigillo tuo & ſigillis eorum qui electioni illi interfuerint,
nobis in cancellar' noſtram ad dictū diem & locum certi-
fices indilate, remittens nobis alteram partem indentu-
rarum prædictarum præſentibus conſus' una cum hoc bre-
ve. Teſte meipſo apud Weſtmon.

The King to the Sberiff of

Greeting.

WHereas by the Advice and Conſent of our
' Councel, for certain difficult and urgent
' Buſineſſes concerning Us, the State and Defence of
' our Kingdom of England, and the *English* Church :
' We have ordained a certain Parliament of ours, to
' be held at Our City of the day
' of next enſuing, and there to have
' Conference, and to treat with the Prelates, Great
' men and Peers of our ſaid Kingdom. We com-
' mand and ſtraitly enjoin you, that making Procla-
' mation at the next County-Court after the Re-
' ceipt of this our Writ, to be holden the day, and
B 2 place

place aforesaid : You cause two Knights, girt with
Swords, the most fit, and discreet of the County
aforesaid : and of every City of that County two
Citizens ; of every Borough, two Burgeesses of the
discreeter and most sufficient ; to be freely, and in-
differently chosen by them who shall be present at
such Proclamation, according to the Tenor of the
Statutes in that case made and provided : and the
Names of the said Knights, Citizens and Burgeesses
so chosen, to be inserted in certain Indentures to be
then made between you, and those that shall be pre-
sent at such Election, whether the Parties so elected
be present, or absent : and shall make them to come
at the said day, and Place : so that the said Knights
for themselves, and for the County aforesaid, and
the said Citizens, and Burgeesses for themselves, and
the Commonalty of the aforesaid Cities, and Bo-
roughs, may have severally from them, full and
sufficient Power to *Perform*, and to *Consent* to
those things which then by the Favour of God
shall there happen to be ordained by the *Common-*
Council of our said Kingdom, concerning the Busi-
nesses aforesaid : So that the Business may not by
any means remain undone for want of such Power,
or by reason of the improvident Election of the
aforesaid Knights, Citizens, and Burgeesses. But
We will not in any case you or any other Sheriff
of Our said Kingdom shall be elected ; And at
the Day and Place aforesaid, the said Election
made in the full County-Court, you shall certifie
without Delay to Us in our Chancery under your
Seal, and the Seals of them which shall be present
at that Election, sending back unto Us the other
part of the Indenture aforesaid assiled to these Pre-
sents,

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'sents, together with this Writ. *Witness Our Self at Westminster.*

By this Writ we do not find that the Commons are called to be any part of the *Common Council* of the Kingdom, or of the *Supream Court of Judicature*, or to have any part of the *Legislative Power*, or to Consult *de arduis regni negotiis*, of the difficult Businesses of the Kingdom. The Writ only sayes, the King would have *Conference*, and *Treat* with the *Prelates*, *Great men*, and *Peers*: but not a word of *Treating* or *Conference* with the Commons; The House of Commons which doth not minister an Oath, nor fine, nor imprison any, but their own Members (and that but of late in some Cases) cannot properly be said to be a Court at all; much less to be a part of the Supream Court, or highest Judicature of the Kingdom: The constant Custom, even to this day, for the Members of the House of Commons to stand bare, with their Hats in their Hands in the Presence of the Lords, while the Lords sit covered at all Conferences, is a visible argument, that the Lords and Commons are not fellow Commissioners, or fellow Counsellors of the Kingdom.

The Duty of Knights, Citizens, and Burgeses, mentioned in the Writ, is only *ad Faciendum*, & *Consentiendum*, to Perform and to Consent to such things as should be ordained by the *Common Council* of the Kingdom; there is not so much mentioned in the Writ as a Power in the Commons to dissent. When a man is bound to appear in a Court of Justice, the words are, *ad Faciendum & recipiendum quod ei per curiam injungetur*: which shews, that this word *Faciendum* is used as a Term in Law to signifie to give Obedience: For this, we meet with a Precedent

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even as ancient as the Parliament-Writ it self, and it is concerning Proceedings in Parliament. 33. Ed. 1. *Dominus Rex mandavit vicecom' quod &c. summon' Nicolaum de Segrave, & ex parte Domini regis firmiter ei injungeret, quod esset coram Domino Rege in proximo Parl. &c. ad audiendum voluntatem ipsius Domini Regis &c. Et ad Faciendum & recipiendum ulterius quod curia Domini Regis consideraret in Præmissis: 'Our Lord*
"the King commands the Sheriff to summon Nicho-
"las Segrave to appear before the Lord our King in the
"next Parliament to hear the Will of the Lord our
"King himself, and to Perform and receive what the
"Kings Court shall further consider of the Premises.

Sir Ed. Coke to prove the Clergy hath no Voice in Parliament; saith, that by the Words of their Writ *their Consent was only to such things as were ordained by the Common Council of the Realm.* If this argument of his be good, it will deny also Voices to the Commons in Parliament, for in their Writ are the self-same words, *viz. to consent to such things as were ordained by the Common Council of the Kingdom.* Sir Edw. Coke concludes, that the *Procuratores Cleri, have many times appeared in Parliament, as Spiritual Assistants, to Consider, Consult, and to Consent; but never had voice there; how they could consult, and Consent without Voices he doth not shew: Though the Clergy (as he saith) oft appeared in Parliament, yet was it only ad consentiendum, as I take it, and not ad faciendum, for the Word Faciendum is omitted in their Writ; the cause, as I conceive is, the Clergy, though they were to assent, yet by reason of Clerical Exemptions, they were not required to Perform all the Ordinances or Acts of Parliament.*

But some may think, though the Writ doth not expresse a Calling of the Knights, Citizens, and
 Bur.

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Burgeſſes to be part of the *Common Council of the Kingdom*; yet it ſuppoſeth it a thing granted, and not to be queſtioned, but that they are a part of the *Common Council*.

Indeed if their Writ had not mentioned the Calling of Prelates, Great men, and Peers to Council, there might have been a little better colour for ſuch a Suppoſition: but the Truth is, ſuch a Suppoſition doth make the Writ it ſelf vain and idle; for it is a ſenſeleſs thing to bid men aſſent to that which they have already ordained: ſince ordaining is an Aſſenting, and more than an Aſſenting.

For clearing the meaning and ſenſe of the Writ, and Satisfaction of ſuch as think it impoſſible but that the Commons of *England* have alwayes been a part of the *Common Council of the Kingdom*, I ſhall inſiſt upon theſe Points. 1. That anciently the *Barons of England were the Common Council of the Kingdom*. 2. That until the time of *Hen. 1.* the Commons were not called to Parliament. 3. Though the Commons were called by *Hen. 1.* yet they were not conſtantly called, nor yet regularly elected by Writ until *Hen. 3.* time.

For the firſt point *M. Cambden* in his *Britania*, doth teach us, that in the time of the *English Saxons*, and in the enſuing Age, a Parliament was called, *Commune concilium*, which was (ſaith he) *Præſentia Regis, Prælatorum, Procerumque collectorum*, the Preſence of the King, Prelates and Peers aſſembled; No mention of the Commons: the Prelates and Peers were all Barons.

The Author of the Chronicle of the Church of *Lichfield*, cited by *M. Selden*, ſaith, *Postquam Rex Edwardus, &c. Concilio Baronum Anglia, &c.* After King Edward was King; by the Council of the Barons of *England* he revived a

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Law which had layen asleep threescore and seven years; and this Law was called the Law of St. Edward the King.

In the same Chronicle it is said, that *Will. the Conquerour anno regni sui quarto apud London'*, had *Concilium Baronum Suorum*, a Council of his Barons. And of this Parliament it is, that his Son *Hen. 1.* speaks, saying, *I restore you the Laws of King Edward the Confessor, with those amendments wherewith my Father amended them by the Council of his Barons.*

In the fifth year, as *M. Selden* thinks, of the Conquerour, was a Parliament or *Principum conventus*, an Assembly of Earls and Barons at *Pinenden Heath* in Kent, in the Cause between *Lanfranke the Arch-bishop of Canterbury*, and *Odo Earl of Kent*. The King gave Commission to *Godfrid*, then Bishop of *Constance* in Normandy, to represent His own Person for Hearing the Controversie (as saith *M. Lambard*) and caused *Egelrick* the Bishop of *Chichester* (an aged man, singularly commended for Skill in the Laws and Customes of the Realm) to be brought thither in a Wagon for his Assistance in Council: Comanded *Haymo* the Sheriff of Kent to summon the whole County to give in Evidence: three whole dayes spent in Debate: in the End *Lanfranke* and the Bishop of *Rocheſter* were restored to the Possession of *Detling* and other Lands which *Odo* hath withholden.

21. Ed. 3. fol. 60. There is mention of a Parliament held under the same King *William the Conquerour*, wherein all the Bishops of the Land, Earls and Barons, made an Ordinance touching the Exemption of the Abby of *Bury* from the Bishops of *Norwich*.

In the tenth year of the Conquerour: *Episcopi, Comites, & Barones regni regia potestate ad universalem Syno-*

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Synodum pro causis audiendis & tractandis convocati,
saith the Book of Westminster.

In the 2 year of *William 2.* there was a Parliament
de cunctis regni Principibus; another which had *Selden.*
quosq; regni proceres: All the Peers of the Kingdom.

In the seventh year was a Parliament at *Rocking-*
ham-Castle in Northampton-shire. *Episcopis, Abba-*
tibus cunctique regni Principibus una coeuntibus.

A year or two after, the same King, *de statu reg-*
ni acturus, &c. called thither, by the Command *Selden.*
of his Writ, the Bishops, Abbots, and all the
Peers of the Kingdom.

At the Coronation of *Hen. 1.* All the People of
the Kingdom of England were called, and *Selden.*
Laws were then made; but it was *Per Com-*
mune Concilium Baronum meorum, by the Common
Council of my Barons.

In his third year, the Peers of the Kingdom were
called without any mention of the Com- *Selden.*
mons: and another a while after, *consensu Co-*
mitum & Baronum, by the consent of Earls and Barons.

Florentius Wigoriensis saith, these are Statutes which
Anselme and all the other Bishops in the Presence of
King Henry, by the assent of his Barons ordained: and
in his tenth year, of Earls and Peers; and in his 23.
of Earls and Barons. In the year following the
same King held a Parliament, or great Council with
His Barons Spiritual and Temporal.

King *Hen. 2.* in his tenth year had a great Coun-
cel or Parliament at *Clarendon*, which was an Assem-
bly of Prelates and Peers.

22. *Hen. 2.* saith *Hovenden*, was a great Coun-
cel at *Nottingham*, and by the Common Council of
the Archbishops, Bishops, Earls and Barons, the King-
dom

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dom was divided into six parts. And again, *Hovenden* saith, that the same King at *Windsor* (*apud Windeshores*) *Communi Concilio* of Bishops, Earls, and Barons, divided England into four Parts. And in his 21 year a Parliament at *Windsor* of Bishops, Earls and Barons. And another of like Persons at *Northampton*.

King *Richard 1.* had a Parliament at *Nottingham*, in his fifth year, of Bishops, Earls, and Barons: This Parliament lasted but four days, yet much was done in it: the first day the King disseiseth *Gerard de Cantvil* of the Sherifwick of *Lincoln*, and *Hugh Bardolph* of the Castle and Sherifwick of *York*. The second day he required judgment against his Brother *John*, who was afterwards King; and *Hugh de Novam* Bishop of *Coventry*. The third day was granted to the King of every Plow-land in *England* 2 s. He required also the third part of the Service of every Knights Fee for his Attendance into *Normandy*, and all the Wool that year of the Monks *Cisteaux*, which, for that it was grievous, and unsupportable, they fine for *Moyny*. The last day was for Hearing of Grievances: and so the Parliament brake up; And the same year held another at *Northampton* of the Nobles of the Realm.

King *John*, in his fifth year, He and his Great men *Siden. met. Rex & Magnates convenerunt:* and the Roll of that year hath *Commune Concilium Baronum Meorum*, the Common Council of my Barons at *Winchester*.

In the sixth year of King *Henry 3.* the Nobles granted to the King, of every Knights Fee, two Marks in Silver.

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In the seventh year he had a Parliament at London, an *Assembly of Barons*. In his thirteenth year an *Assembly of the Lords at Westminster*. In his fifteenth year of Nobles both *Spiritual and Temporal*.

M. Par. saith that 20. H. 3. *Congregati sunt Magnates ad colloquium de negotiis regni tractaturi*, the Great men were called to confer and treat of the Business of the Kingdom. And at Merton, Our Lord the King granted by the Consent of his Great men, That hereafter *Usury* should not run against a *Ward* from the Death of his Ancestor.

21. Hen. 3. The King sent his *Royal Writs*, commanding all belonging to His Kingdom, that is to say, *Arch-bishops, Bishops, Abbots and Priors* installed, *Earls and Barons*, that they should all meet at London, to treat of the Kings Business touching the whole Kingdom: and at the day prefixed, the whole multitude of the Nobles of the Kingdom met at London, saith *Mat. Westminster*.

In his 21 year, At the Request, and by the Council of the Lords, the *Charters* were confirmed.

22. Hen. 3. At Winchester the King sent his *Royal Writs* to *Arch-bishops, Bishops, Priors, Earls and Barons*, to treat of Business concerning the whole Kingdom.

32. Hen. 3. The King commanded all the Nobility of the whole Kingdom to be called to treat of the State of His Kingdom. *Mat. Westminster*.

49. Hen. 3. The King had a Treaty at Oxford with the Peers of the Kingdom. *M. Westminster*.

At a Parliament at Marlborow 55. Hen. 3. Statutes were made by the Assent of *Earls and Barons*.

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Here the Place of *Bracton*, Chief Justice in this Kings time, is worth the observing; and the rather for that it is much insisted on of late, to make for Parliaments being above the King. The words in *Bracton* are, *The King hath a Superiour, God; also the Law by which he is made King; also his Court, viz. the Earls and Barons.* The Court that was said in those days to be above the King was a Court of *Earls and Barons*, not a Word of the Commons, or the representative Body of the Kingdom being any part of the Superiour Court. Now for the true Sense of *Bractons* words, how the Law, and the Court of *Earls and Barons*, are the Kings Superiours; they must of Necessity be understood to be Superiours, so far only as to advise, and direct the King out of his own Grace and Good Will only: which appears plainly by the Words of *Bracton* himself, where, speaking of the King, he resolves thus, *Nec potest ei necessitatem aliquis imponere quod injuriam suam corrigat & emendat, cum superiorem non habeat nisi Deum; & satis ei erit ad penam, quod Dominum expectat ultorem.* Nor can any man put a necessity upon Him to correct and amend his Injury unless he will himself, since he hath no Superiour but God; it will be sufficient Punishment for him, to expect the Lord an avenger. Here the same man, who speaking according to some mens Opinion saith, the *Law and Court of Earls and Barons* are superiour to the King; in this place tells us himself, the *King hath no Superiour but God*: the Difference is easily reconciled; according to the Distinction of the School-men the King is free from the Coactive Power of Laws or Councillors: but may be subject to their Directive Power, according to his own Will: that is God can only compell, but the Law

Law and his Courts may advise Him.

Rot. Parliament. 1 Hen. 4. nu. 79. the Commons expressly affirm, *Judgment in Parliament belongs to the King and Lords.*

These Precedents shew, that from the Conquest untill a great part of Henry the Third's Reign (in whose dayes it is thought the Writ for Election of Knights was framed) which is about two hundred years, and above a third part of the time since the Conquest to our dayes, the *Barons* made the *Parliament* or *Common Councel of the Kingdom*: under the name of *Barons*; not only the *Earls*, but the *Bishops* also were Comprehended, for the Conquerour made the *Bishops Barons*. Therefore it is no such great Wonder, that in the Writ, we find the *Lords* only to be the *Counsellours*, and the *Commons* Called only to *perform* and *consent* to the *Ordinances*.

Those there be who seem to believe that under the word *Barons*, anciently the Lords of Court-Barons were Comprehended, and that they were Called to Parliament as *Barons*; But if this could be proved to have been at any time true, yet those Lords of Court-Barons were not the representative Body of the Commons of *England*, except it can be also proved that the Commons, or Free-holders of the Kingdome chose such Lords of Court-Barons to be present in Parliament. The Lords of Manors came not at first by Election of the People, as Sir *Edw. Coke*, treating of the institution of Court-Barons, resolves us in these words: *By the Laws and Ordinances of ancient Kings, and especially of King Alfred, it appeareth, that the first Kings of this Realm had all the Lands of England in Demean; and les grand Manors and Royalties they reserved to themselves,*
and

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and of the remnant they, for the Defence of the Realm, enfeoffed the Barons of the Realm with such Jurisdiction as the Court-Baron now hath. Coke's Institutes, First part, Fol. 58.

Here, by the way, I cannot but note that if the first Kings had all the Lands of England in Demean, as Sir Edward Coke saith they had; And if the first Kings were chosen by the People, (as many think they were) then surely our Forefathers were a very bountiful (if not a prodigal) People, to give all the Lands of the whole Kingdom to their Kings, with Liberty for them to keep what they pleased, and to give the Remainder to their Subjects, clogg'd and cumbred with a Condition to defend the Realm: This is but an ill sign of a limited Monarchy by original Constitution or Contract. But to conclude the former Point, Sir Edward Coke's Opinion is, that in the ancient Laws, under the name of Barons were comprised all the Nobility.

This Doctrine of the Barons being the Common Council, doth displease many, and is denied, as tending to the Disparagement of the Commons, and to the Discredit, and Confutation of their Opinion, who teach, that the Commons are assigned Councillors to the King by the People, therefore I will call in Mr. Pryn to help us with his Testimony: He in his Book of Treachery and Disloyalty &c. proves that before the Conquest, by the Laws of Edward the Confessor, cap. 17. The King by his Oaths was to do Justice by the Council of the Nobles of his Realm. He also resolves, that the Earls and Barons in Parliament are above the King, and ought to bridle him, when he exorbitates from the Laws. He further tells us, the Peers and Prelates have oft translated the Crown from the right Heir.

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1. *Electing and Crowning Edward, who was illegitimate; and putting by Ethelred, the right Heir after Edgars decease.*

2. *Electing and Crowning Canutus, a meer Foreigner, in opposition to Edmund the right Heir to King Ethelred.*

3. *Harold and Hardiknute, both elected Kings successively without title; Edmund and Alfred the right Heirs being dispossessed.*

4. *The English Nobility, upon the Death of Harold, enacted that none of the Danish blood should any more reign over them.*

5. *Edgar Etheling, who had best Title, was rejected; and Harold elected and crowned King.*

6. *In the second and third year of Edw. 2. the Peers and Nobles of the Land, seeing themselves contemned, entreated the King to manage the Affairs of the Kingdome by the Council of his Barons. He gave his Assent, and sware to ratifie what the Nobles ordained; and one of their Articles was, that he would thenceforward order all the Affairs of the Kingdom by the Council of his Clergy and Lords.*

7. *William Rufus, finding the greatest part of the Nobles against him, sware to Lanfranke that if they would choose him for King, he would abrogate their overhard Laws.*

8. *The Beginning, saith Mr. Pryn, of the Charter of Hen. 1. is observable; Henry by the Grace of God of England, &c. Know ye, That by the Mercy of God and Common Council of the Barons of the Kingdom, I am Crowned King.*

9. *Maud the Empress, the right Heir, was put by the Crown by the Prelates and Barons, and Stephen, Earl of Mortain, who had no good Title, assembling the Bish-*

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Bishops and Peers, promising the amendment of the Laws according to all their Pleasures and Liking, was by them all proclaimed King.

10. *Lewis of France Crowned King by the Barons, in stead of King John.*

All these Testimonies from Mr. Pryn may satisfie, that anciently the Barons were the *Common Council, or Parliament of England*. And if Mr. Pryn could have found so much Antiquity, and Proof for the Knights, Citizens, and Burgessees, being of the *Common Council*: I make no doubt but we should have heard from him in Capital Characters: but alas! he meets not with so much as these Names in those elder Ages. He dares not say the Barons were assigned by the People, *Councillors to the King*; for he tells us, every Baron in Parliament doth represent his own Person, and speaketh in behalf of himself alone; but in the Knights, Citizens, and Burgessees, are represented the Commons of the whole Realm: therefore every one of the Commons hath a greater voice in Parliament than the greatest Earl in England. Nevertheless Master Pryn will be very well content if we will admit and swallow these Parliaments of Barons for the representative Body of the Kingdom; and to that Purpose he cites them, or to no Purpose at all. But to prove the Treachery and Disloyalty of Popish Parliaments, Prelates, and Peers, to their Kings: which is the main Point, that Master Pryn by the Title of his Book is to make good, and to prove.

As to the second Point; which is, That untill the time of *Hen. 1.* the Commons were not called to Parliament: besides, the general Silence of Antiquity which never makes mention of the Commons Coming to Parliament untill that time; our Historians
say

say, before his time only certain of the Nobility were called to Consultation about the most important affairs of the State: He caused the Commons also to be assembled by Knights, Citizens, and Burgeses of their own Appointment: much to the same Purpose writes Sir Walter Raleigh, saying, it is held that the Kings of England had no formal Parliaments till about the 18th year of King Hen. 1. For in his Third year, for the Marriage of his Daughter, the King raised a Tax upon every Hide of Land, by the Advice of His Privy Council alone. And the Subjects (saith he) soon after this Parliament was established, began to stand upon Terms with their King, and drew from him by strong hand, and their Swords, their Great Charter; it was after the establishment of the Parliament, by colour of it, that they had so great Daring. If any desire to know the cause why Hen. 1. called the People to Parliament, it was upon no very good Occasion, if we believe Sir Walter Raleigh; The Grand Charter (saith he) was not originally granted Regally and freely, for King Hen. 1. did but usurp the Kingdom, and therefore the better to assure himself against Robert his elder Brother, he flattered the People with those Charters: yea, King John that confirmed them, had the like Respect: for Arthur D. of Britain was the undoubted Heir of the Crown, upon whom John usurped: so these Charters had their original from Kings, de facto, but not de jure: and then afterwards his Conclusion is, that the Great Charter had first an obscure Birth by Usurpation, and was fostered, and shewed to the World by Rebellion: in brief, the King called the People to Parliament, and granted them *Magna Charta*; that they might confirm to him the Crown.

The third Point consists of two parts; First, that the Commons were not called unto Parliament until

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Hen. 3. dayes, this appears by divers of the Precedents formerly cited, to prove that the *Barons were the Common Councel*. For though *Hen. 1.* called all the People of the Land to His Coronation, and again in the 15. or 18. year of his Reign; yet alwayes he did not so; neither many of those Kings that did succeed him, as appeareth before.

Secondly, for calling the Commons by Writ, I find it acknowledged in a Book, intituled, *The Privilege and Practice of Parliaments*, in these words; *In ancient times after the King had summoned His Parliament, innumerable multitudes of People did make their Access thereunto, pretending that Privilege of Right to belong to them. But King Hen. 3. having Experience of the Mischief, and inconveniences by occasion of such popular Confusion, did take order that none might come to His Parliament but those who were specially summoned.* To this purpose it is observed by Master Selden, that the first Writs we find accompanied with other Circumstances of a Summons to Parliament, as well for the Commons as Lords, is in the 49 of *Hen. 3.* In the like manner Master Cambden speaking of the Dignity of Barons hath these Words: *King Hen. 3. out of a great Multitude which were seditious and turbulent, called the very best by Writ or Summons to Parliament; for be, after many Troubles and Vexations between the King himself, and Simon de Monfort, with other Barons; and after appeased: did decree and ordain, That all those Earls and Barons unto whom the King himself vouchsafed to direct His Writs of Summons should come to his Parliament, and no others: but that which he began a little before his Death, Edward 1. and his Successors constantly observed and continued.* The said prudent King Edward

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summoned always those of ancient Families, that were most wise, to His Parliament; and omitted their Sons after their Death, if they were not answerable to their Parents in Understanding. Also Master Cambden in another place saith, that in the time of Edw. 1. select men for Wisdom and Worth among the Gentry were called to Parliament, and their Posterity omitted if they were defective therein.

As the power of sending Writs of Summons for Elections, was first exercised by Hen. 3. so succeeding Kings did regulate the Elections upon such Writs, as doth appear by several Statutes, which all speak in the Name and Power of the Kings themselves; for such was the Language of our Fore-fathers.

In 5 Ric. 2. c. 4. these be the words, *The King Willeth and Commandeth all Persons which shall have Summons to come to Parliament; and every Person that doth absent himself (except he may reasonably and honestly excuse him to Our Lord the King) shall be amerced, and otherwise punished.*

7 Hen. 4. c. 15. *Our Lord the King, at the grievous complaint of his Commons, of the undue Election of the Knights of Counties, sometimes made of affection of Sheriffs, and otherwise against the Form of the Writs, to the great slander of the Counties, &c. Our Lord the King, willing therein to provide Remedy, by the Assent of the Lords and Commons, Hath Ordained, That Election shall be made in the full County-Court, and that all that be there present, as well Suitors as others, shall proceed to the Election freely, notwithstanding any Request, or Command to the contrary.*

11 Hen. 4. c. 1. *Our Lord the King Ordained, that a Sheriff that maketh an undue Return, &c. shall incur the Penalty of 100 l. to be paid to Our Lord the King.*

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1 H. 5. c. 1. Our Lord the King, by the Advice and Assent of the Lords, and the special Instance and Request of the Commons, Ordained, that the Knights of the Shire be not chosen, unless they be resiant within the Shire the day of the date of the Writ: and that Citizens and Burgresses be resiant, dwelling, and free in the the same Cities and Burroughs, and no others, in any wise.

6 Hen. 6. c. 4. Our Lord the King, willing to provide remedy for Knights chosen for Parliament, and Sheriffs, Hath Ordained, that they shall have their Answer, and traverse to Inquest of Office found against them.

8 Hen. 6. c. 7. Whereas Elections of Knights have been made by great Out-rages, and excessive number of People, of which most part was of People of no value, whereof every of them pretend a Voice equivalent to Worthy Knights, and Esquires; whereby Man-slaughters, Riots, and Divisions among Gentlemen shall likely be: Our Lord the King hath Ordained, That Knights of Shires be chosen by People dwelling in the Counties, every of them having Lands or Tenements to the value of 2 l. the year at the least, and that he that shall be chosen, shall be dwelling and resiant within the Counties.

10.H.6. Our Lord the King ordained, that Knights be chosen by People dwelling, and having 2 l. by the year within the same County.

11 H. 6. c. 11. The King, willing to provide for the Ease of them that come to the Parliaments and Councils of the King by his Commandment, hath ordained, that if any Assault or Fray be made on them that come to Parliament, or other Council of the King; the Party which made any such Affray or Assault, shall pay double Damages, and make Fine and Ransom at the Kings Will.

23. H. 6. c. 15. The King considering the Statutes of 1 H. 5. c. 1. & 8. Hen. 6. c. 7. and the Defaults of Sheriffs in returning Knights, Citizens, and Burgeses, ordained;

1. That the said Statutes should be duely kept,
2. That the Sheriffs shall deliver Precepts to Maiors, and Bayliffs to chuse Citizens and Burgeses.
3. The Penalty of 100 l. for a Sheriff making an untrue Return concerning the election of Knights, Citizens and Burgeses.

4. The Penalty of 40 l. for Maiors or Bayliffs, making untrue Returns.

5. Due Election of Knights must be in the full County-Court, between the Hours of Eight and Eleven before noon.

6. The Party must begin his Suit within 3 Moneths after the Parliament began.

7. Knights of the Shire shall be notable Knights of the County, or such notable Esquires, or Gentlemen born of the said Counties as shall be able to be Knights, and no man to be such Knight which standeth in the Degree of a Yeoman, and under.

The last thing I observe in the Writ for Election of Members for Parliament, is, That by the expresse words of the Writ, Citizens and Burgeses for the Parliament were eligible at the County-Court as well as Knights of the Shire; and that not only Free-holders, but all others, whosoever were present at the County-Court, had Voices in such Elections: see the Stat. 7. Hen. 4. cap. 15.

I have the longer insisted on the Examination of the Writ, being the Power, and Actions of the House of Commons are principally justified by the Trust which the Free-holders commit unto them by virtue of this Writ.

I would not be understood to determine what Power the House of Commons doth, or may exercise if the King please: I confine my self only to the Power in the Writ. I am not ignorant that King *Hen. 7.* in the Cause of the Duke of *Britain*, and King *James* in the Business of the *Palatinate* asked the Council of the House of Commons; and not only the House of Commons, but every Subject in particular by Duty and Allegiance, is bound to give his best Advice to his Sovereign, when he is thought worthy to have his Council asked.

13. *Edw. 3. nu. 10.* All the Merchants of England were summoned by Writ to appear at Westminster in proper Person, to confer upon great business concerning the Kings Honour, the Salvation of the Realm, and of themselves.

In Passages of publick Council it is observable (saith Sir Rob. Cotton) that in ancient times the Kings of England did entertain the Commons with weighty Causes, thereby to apt and bind them to a readiness of Charge; and the Commons to shun Expence have warily avoided to give Advice.

13. *Edw. 3.* The Lords and Commons were called to consult how the domestick Quiet may be preserved, the Marches of *Scotland* defended, and the Sea secured from Enemies. The Peers and Commons having apart consulted, the Commons desired Not to be charged to Council of things of which they had no Cognisance; *de quaux ils n'ont pas de Cognisance.*

21. *Edw. 3.* Justice *Thorp* declaring to the Peers and Commons that the French War began by their Advice: the Truce after by their Assent accepted, and now ended: the Kings Pleasure was to have their

their Counsel in the Prosecution: the Commons, being commanded to assemble themselves, and when they were agreed, to give notice to the King, and the Lords of the Council; after four days Consultation, *Humbly desire of the King that he would be advised therein by the Lords and others of more Experience than themselves in such Affairs.*

6. Ric. 2. The Parliament was called to consult whether the King should go in Person to rescue Gaunt, or send an Army. The Commons, after two dayes Debate, crave a Conference with the Lords, and Sir Thomas Puckering (their Speaker) protests, that *Councils for War did aptly belong to the King and His Lords*; yet since the Commons were commanded to give their Advice, *they humbly wished a Voyage by the King.*

7. Ric. 2. At the second Session, the Commons are willed to Advise upon View of Articles of Peace with the French; whether War or such Amity should be accepted; *they modestly excuse themselves, as too weak to Counsel in so weighty Causes.* But charged again, as they did tender their Honour and the Right of the King; they make their Answer, giving their Opinions, *rather for Peace, than War.*

For fuller Manifestation of what hath been said touching the Calling, Election, and Power of the Commons in Parliament, it is behooful to observe some Points delivered by Sir Edw. Coke in his Treatise of the Jurisdiction of Parliaments; where,

First, he fairly begins, and lays his Foundation, that *the High Court of Parliament consisteth of the Kings Majesty sitting there, and of the three Estates;*

1. *The Lords Spiritual.*

2. *The Lords Temporal.*

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3. *And*

3. *And the Commons.*

Hence it is to be gathered, that truly and properly it cannot be called the *High Court of Parliament*, but whilst the King is sitting there in Person: so that the Question now a-days, whether the *Parliament be above the King*, is either false or idle: false, if you exclude, and idle if you include the King's Person in the word *Parliament*: The case truly put, and as it is meant, is, whether the three Estates (or which is all one, the Lords and Commons) assembled in Parliament be above the King: and not whether the King with the three Estates be above the King: It appears also that they are much mistaken, who reckon the King one of the three Estates as Mr. Pryn, pag. 20. and many others do; for the three Estates make the Body, and the King is *Caput, Principium, & finis Parliamentor'*, as confesseth Sir Edw. Coke.

Secondly, Sir Edw. Coke delivers, That certain it is, both Houses at first sate together, and that it appears in Edward the Third's time, the Lords and Commons sate together, and the Commons had no continual Speaker. If he mean, the Lords and Commons did sit, and Vote together in one Body; few there be that will believe it, because the Commons never were wont to lose, or forego any of their Liberties, or Privileges; and for them to stand now with their Hats in their hands (which is no Magistratical Posture) there, where they were wont to sit and Vote, is an alteration not imaginable to be indured by the Commons. It may be, in former times, when the Commons had no constant Speaker, they were oft, and perhaps for the most part, in the same Chamber, and in the presence of the Lords, to hear the Debates and Con-

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sultations of the *Great Council*, but not to sit, and Vote with them: for when the Commons were to Advise among themselves, the Chapter-house of the *Abby of Westminster* was oft-times their place to meet in, before they had a settled House, and their meetings not being very frequent, may be the reason, I conceive, why the name of the House of Commons is not of such great Antiquity, or taken notice of; but the House of Lords was only called the Parliament-House: and the Treatise called, *Modus tenendi Parliamentum*, speaks of the *Parliament* as but of one House only. The House, where now the Commons sit in *Westminster*, is but of late Use, or Institution: for in *Edward the Sixth's* dayes it was a Chappel of the Colledge of Saint *Stow.* *Stephen*, and had a Dean, Secular Canons and Chorists, who were the Kings Quire at his Palace at *Westminster*, and at the dissolution were translated to the Kings Chappel at *White-hall*.

Also I read, that *Westminster-hall* being out of Repair, Ric. 2. caused a large House to be builded betwixt the Clock-tower, and the Gate of the great old Hall in the midit of the Palace Court: the House was long and large, made of Timber, covered with Tiles, open on both sides, that all might see and hear what was both said and done: four thousand Archers of *Cheshire*, which were the Kings own Guard, attended on that House, and had *boûche a Court*, and 6 d. by the day.

Thirdly, he saith, *The Commons are to chuse their Speaker, but seeing after their Choice the King may refuse him, the Use is (as in the conge d'eslire of a Bishop) that the King doth name a Discreet, Learned man whom the Commons Elect: when the Commons have*
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chosen, the King may allow of his Excuse, and Disallow him, as Sir John Popham was, (saith his Margin.)

Fourthly, he informs us, That the first day of the Parliament four Justices assistants, and two Civilians, (Masters of the Chancery) are appointed Receivers of Petitions, which are to be delivered within six dayes following: and six of the Nobility, and two Bishops, calling to them the Kings Learned Councel, when need should be, to be Tryers of the said Petitions, whether they were reasonable, good, and necessary to be offered and propounded to the Lords. He doth not say, that any of the Commons were either Receivers, or Tryers of Petitions: nor that the Petitions were to be propounded to Them, but to the Lords.

Fifthly, he teacheth us, that a Knight, Citizen, or Burgess, cannot make a Proxy, because he is Elected, and Truſted by multitudes of People: here a Question may be, whether a Committee, if it be Truſted to all any thing, be not a Proxy? since he saith, the High Power of Parliament to be committed to a few, is holden to be against the Dignity of Parliaments; and that no such Commission ought to be granted.

Sixthly, he saith, The King cannot take notice of any thing said, or done in the House of Commons, but by the Report of the House. Surely, if the Commons sate with the Lords, and the King were present, He might take notice of what was done in His Presence. And I read in *Vowel*, that the old Usage was, that all the Degrees of Parliament sate together, and every man that had there to speak, did it openly, before the King and his whole Parliament.

In the 35 Eliz. there was a Report, that the Commons were against the Subsidies, which was told the

the Queen : whereupon, Sir Henry Knivet said, it should be a thing answerable at the Bar for any man to report any thing of Speeches, or Matters done in the House. Sir John Wolley liked the Motion of Secrecy; except only the Queen, from whom, he said, there is no reason to keep any thing : And Sir Robert Cecil did allow, that the Council of the House should be secretly kept, and nothing reported in *malam partem*. But if the meaning be, that they might not report any thing done here to the Queen, he was altogether against it.

Seventhly, he voucheth an *Enditement* or *Information* in the Kings Bench against 39 of the Commons, for departing without License from Parliament, contrary to the Kings Inhibition: whereof six submitted to their Fines, and Edmund Ployden pleaded, he remained continually from the beginning to the end of the Parliament: Note, he did not plead to the Jurisdiction of the Court of Kings Bench, but pleaded his constant Attendance in Parliament, which was an Acknowledgment, and submitting to the Jurisdiction of that Court : and had been an unpardonable betraying of the Privileges of Parliament by so learned a Lawyer, if his Case ought only to be tryed in Parliament.

Eighthly, he resolves, that the House of Lords in their House have Power of Judicature, and the Commons in their House: and both Houses together. He brings Records to prove the Power of Judicature of both Houses together, but not of either of them by it self. He cites the 33 *Edw. 1.* for the Judicature of both Houses together : where *Nicholas de Segrave* was adjudged *per Prelatos, Comites, & Barones, & alios de Concilio*, by the Prelates, Earls and Barons, and others of the Council. Here is no mention of the

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the Judgment of the Commons. *Others of the Council*, may mean, the Kings Privy Council, or his Council Learned in the Laws, which are called by their Writs to give Counsels; but so are not the Commons. The Judgment it self saith, "*Nicholas de Segrave* confessed his fault in Parliament, and submitted himself to the Kings Will: thereupon the King, willing to have the Advice of the Earls Barons, Great men, and others of his Council, enjoined them by the Homage, Fealty, and Allegiance which they owed, that they should faithfully counsel Him what Punishment should be inflicted for such a Fact: who all, advising diligently, say, That such a Fact deserves loss of Life and Members. Thus the Lords (we see) did but Advise the King what Judgment to give against him that deserted the Kings Camp to fight a Duel in France.

Ninthly, he saith, *Of later times, see divers notable Judgments at the Prosecution of the Commons by the Lords*: where the Commons were Prosecutors, they were no Judges, but (as he termes them) *general Inquisitors*, or *the Grand Inquest of the Kingdom*. The Judgments he cites are but in King James his dayes, and no elder.

Tenthly, also he tells us, of the *Judicature in the House of Commons alone*; his most ancient precedent is but in Queen Elizabeths Reign, of one *Tho. Long*, who gave the Maior of Westbury 10 l. to be elected *Burges*s.

Eleventhly, he hath a Section, entitled, *The House of Commons (to many Purposes) a distinct Court*: and saith, *Nota, the House of Commons to many Purposes, a distinct Court*: of those many Purposes he tells but one, that is, *it uses to adjourn it self*. Commissioners that
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be but to examine Witnesses, may Adjourn themselves, yet are no Court.

Twelfthly, he handles the *Privileges of Parliament*, where the great Wonder is, that this great Master of the Law, who hath been oft a Parliament-man, could find no other, nor more Privileges of Parliament but one, and that is, *freedom from Arrests*: which, he saith, holds, unless in three cases, *Treason, Felony, and the Peace*. And for this freedom from Arrests, he cites Antient Precedents for all those in the House of Lords, but he brings not one Precedent at all for the Commons Freedom from Arrests.

It is behooful for a Free-holder to consider what Power is in the House of Peers; for although the Free-holder have no Voice in the Election of the Lords, yet if the Power of that House extend to make Ordinances that bind the Free-holders, it is necessary for him to enquire *what* and *whence* that Power is, and how far it reacheth: The chief Writ of Summons to the *Peers* was in these words,

CAROLUS Dei Gratia, &c. Reverendissimo in Christo patri G. eadem gratia Archiepiscopo Cantuariensi, totius Angliæ Primati & Metropolitano, salutem. Quia de advisamento & assensu Concilii nostri, pro quibusdam arduis & urgentibus negotiis, Nos & statum & defensionem regni nostri Angliæ, & ecclesiæ Anglicanæ concernentibus, quoddam Parliamentum nostrum apud W. &c. teneri ordinavimus, & ibidem vobiscum, & cum ceteris Prælatiis, Magnatibus & Proceribus dicti regni nostri Angliæ colloquium habere, & tractatum: Vobis in fide, & dilectione quibus nobis tenemini firmiter injungendo

gendo mandamus, quod consideratis dictorum negotiorum arduitate, & periculis imminentibus, cessante quacunque excusatione dictis die & loco personaliter interfutis, Nobiscum & cum ceteris Prelatis, Magnatibus, & Proceribus predictis, super dictis negotiis tractaturi, vestrumque concilium impensari, & hoc sicut Nos & Honorem nostrum ac saluationem regni predicti, ac ecclesie sancte, expeditionemque dictorum negotiorum diligitis, nullatenus omittatis; Præmonentes Decanum & capitulum ecclesie vestre Cantuariensis, ac Archidiaconos, totumque Clerum vestre Diocesis, quod idem Decanus & Archidiaconi in propriis personis suis, ac dictum Capitulum per unum, idemque Clerus per duos Procuratores idoneos, plenam & sufficientem potestatem ab ipsis Capitulo & Clero habentes, predictis die & loco personaliter interfut, ad consentiendum hiis quæ tunc ibidem de Commune Concilio ipsius Regni Nostri, divina favente Clementia, contigerint ordinari. Teste Meipso apud West. &c.

CHARLES by the Grace of God, &c. To the most Reverend Father in Christ *W.* by the same Grace Arch-bishop of *Canterbury*, Primate and Metropolitan of all *England*, Health. Whereas by the Advice and Assent of our Council, for certain difficult and urgent Busineses concerning Us, the State, and Defence of Our Kingdom of *England*, and of the English Church: We have Ordained a certain Parliament of Ours to be holden at *W.* &c. and there to have Conference, and to treat with you the Prelats, Great men, and Peers of Our said Kingdom. We straitly Charge and Command, by the Faith and Love by which you are bound to Us, that considering the Difficulties of the Busineses aforesaid, and the imminent Dangers, and setting aside all Ex-

cuses,

cuses, you be personally present at the Day and Place aforesaid, to treat and give your Counsel concerning the said Busineses: And this, as you love Us and Our Honour, and the Safeguard of the foresaid Kingdom and Church, and the Expedition of the said Busineses, you must no way omit. Forewarning the Dean and Chapter of your Church of *Canterbury*, and the Arch-deacons, and all the Clergy of your Diocese, that the same Dean, and the Arch-deacon in their proper Persons, and the said Chapter by one, and the said Clergy by two fit Proctors, having full and sufficient Power from them the Chapter and Clergy, be personally present at the foresaid Day and Place, to Consent to those things, which then and there shall happen by the favour of God, to be Ordained by the Common Council of our Kingdom. Witness Our Self at *Westm.*

The same Form of Writ *mutatis mutandis*, concluding with, *you must no way omit.* Witness, &c. is to the Temporal Barons: But whereas the Spiritual Barons are required by the Faith and Love; the Temporal are required by their Allegiance or Homage.

The Difference between the two Writs is, *that* the Lords are to *Treat* and to *Give Counsel*; the Commons are to *Perform* and *Consent* to what is ordained.

By this Writ the Lords have a *deliberative* or a *consultive Power* to *Treat*, and *give Counsel* in *difficult Busineses*: and so likewise have the Judges, Barons of the Exchequer, the Kings Council, and the Masters of the Chancery, by their Writs. But over and besides this Power, the Lords do exercise a *decisive*
or

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or *Judicial Power*, which is not mentioned or found in their Writ.

For the better Understanding of these two different Powers, we must carefully note the distinction between a *Judge* and a *Counsellor* in a Monarchy: the ordinary Duty, or Office of a *Judge* is to give Judgment, and to command in the Place of the King; but the ordinary Duty of a *Counsellor* is to advise the King what he himself shall do, or cause to be done: The *Judge* represents the *Kings Person in his absence*, the *Counsellor* in the *Kings Presence* gives his Advice: *Judges* by their Commission or Institution are limited their Charge and Power, and in such things they may judge, and cause their Judgments to be put in Execution: But *Counsellors* have no Power to command their Consultations to be executed, for that were to take away the Sovereignty from their Prince, who by his Wisdom is to weigh the Advice of his Council, and at liberty to resolve according to the Judgment of the wiser part of his Council, and not always of the greater: In a word, regularly a *Counsellor* hath no Power but in the Kings Presence, and a *Judge* no Power but out of his Presence; These two Powers, thus distinguished, have yet such Correspondency, and there is so near Affinity between the Acts of judging, and counselling; that although the ordinary Power of the Judge is to give Judgment: yet by their Oath they are bound in Causes extraordinary, when the King pleaseth to call them, to be his Counsellors; and on the other side, although the proper work of a Counsellor be only to make Report of his Advice to his Sovereign, yet many times for the Ease only, and by the Permission of the King, Counsellors are allowed

to judge, and command in Points wherein ordinarily they know the mind of the Prince; and what they do is the act of the Royal Power it self: for the Council is always presupposed to be united to the Person of the King, and therefore the Decrees of the Council are styled, *By the King in his Privy Council.*

To apply this Distinction to the House of Peers: we find originally they are called as Counsellors to the King, and so have only a *deliberative* Power specified in their Writ, and therefore the Lords do only then properly perform the Duty for which they are called, when they are in the Kings Presence, that *He may have Conference and treat with them*: the very Words of the Writ are, *nobiscum ac cum Prelatis, Magnatibus & Proceribus prædictis super dictis negotiis tractaturi vestrumque concilium impensuri*, with Us and with the Prelates, Great men and Peers to treat and give your council: the word *Nobiscum* implieth plainly the Kings Presence. It is a thing in reason most absurd, to make the King assent to the Judgments in Parliament, and allow Him no part in the Consultation; this were to make the King a Subject. Council loseth the name of *Council*, and becomes a *Command* if it put a Necessity upon the King to follow it: such Imperious Councils, make those that are but Counsellors in name to be Kings in Fact: and Kings themselves to be but Subjects. We read in Sir Robert Cotton, that towards the end of the Saxons, and the first times of the Norman Kings, Parliaments stood in Custom-grace fixed to Easter, Whitsontide, and Christmas; and that at the Kings Court, or Palace,

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Parliaments sate in the Presence, or Privy Chamber: from whence he infers, an Improbability to believe the King excluded His own Presence; and unmannerly for Guests to bar Him their Company who gave them their Entertainment. And although now a-days the Parliament sit not in the Court where the Kings household remains, yet still even to this day, to shew that Parliaments are the Kings Guests, the Lord Steward of the Kings Household keeps a standing Table to entertain the Peers during the sitting of Parliament; and he alone, or some from, or under him, as the Treasurer, or Comptroller of the Kings Household takes the Oaths of the Members of the House of Commons the first day of the Parliament.

Sir Richard Scroop Steward of the Household of our Sovereign Lord the King, by the Commandment of the Lords sitting in full Parliament in the Great Chamber, put *J. Lord Gomeniz* and *William Weston* to answer severally to Accusations brought against them. *Selden.*

The Necessity of the King's Presence in Parliament, appears by the Desire of Parliaments themselves in former times; and the Practice of it *Sir Robert Cotton* proves by several Precedents: whence he concludes, *that in the Consultations of State, and Decisions of private Complaints, it is clear from all times, the King was not only present to advise, but to determine also.* Whosoever the King is present, all Power of judging, which is derived from *His*, ceaseth: The Votes of the Lords may serve for matter of Advice, the final Judgment is only the Kings. Indeed, of late years, *Queen Mary*, and *Queen Elizabeth*, by reason of their Sex, being not so fit for publick Assemblies, have brought it out of Use, by which means it is come

to pass, that many things which were in former times acted by Kings themselves, have of late been left to the Judgment of the *Peers*; who, in Quality of Judges extraordinary, are permitted for the Ease of the King, and in His absence, to determine such matters as are properly brought before the King Himself sitting in Person, attended with *His great Council of Prelates and Peers*. And the Ordinances that are made there, receive their Establishment either from the Kings Presence in Parliament, where his Chair of State is constantly placed; or at least from the Confirmation of Him, who in all Courts, and in all Causes is Supreme Judge. All Judgment is by, or under Him; it cannot be without, much less against his Approbation. *The King only and none but He, if He were able, should judge all Causes*; saith *Bracton*, that ancient Chief Justice in Hen. 3. time.

An ancient Precedent I meet with cited by Master *Selden*, of a judicial Proceeding in a Criminal Cause of the *Barons* before the Conquest, wherein I observe the *Kings Will* was, that the Lords should be Judges, in the Cause wherein *Himself* was a Party; and He ratified their Proceeding: The case was thus, Earl *Godwin* having had a Trial before the Lords under King *Hardicanute*, touching the Death of *Alfred* (Son to King *Ethelbert*, and Brother to him who was afterward *Edward the Confessor*) had fled out of *England*; and upon his Return, with Hope of *Edward the Confessor's* Favour, he solicited the Lords to intercede for him with the King; who (consulting together) brought *Godwin* with them before the King to obtain his Grace and Favour: But the King presently, as soon as he beheld him, said, *Thou*

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Traytor Godwin, I do appeal thee of the Death of my Brother Alfred, whom thou hast most trayterously slain; Then Godwin excusing it, answered, My Lord the King, may it please your Grace, I neither betrayed nor killed your Brother, whereof I put myself upon the Judgment of your Court: Then the King said, You noble Lords, Earls, and Barons of the Land, who are my Liege men now gathered here together, and have heard My Appeal, and Godwins Answer, I Will that in this Appeal between Us, ye decree right Judgment, and do true Justice. The Earls and Barons treating of this among themselves, were of differing Judgments; some said that Godwin was never bound to the King either by Homage, Service, or Fealty, and therefore could not be his Traytor, and that he had not slain Alfred with his own hands: others said, that neither Earl nor Baron, nor any other Subject of the King could wage his War by Law against the King in his Appeal; but most wholly put himself into the Kings Mercy, and offer competent Amends. Then Leofric Consul of Chester, a good man before God and the World, said, Earl Godwin next to the King, is a man of the best Parentage of all England, and he cannot deny but that by his Counsel Alfred the Kings Brother was slain, therefore for my part I consider, that He and his Son, and all we twelve Earls who are his Friends and Kinsmen, do go humbly before the King, laden with so much Gold and Silver as each of us can carry in our Arms, offering him That for his Offence, and humbly praying for Pardon, And he will pardon the Earl, and taking his Homage and Fealty, will restore him all his Lands. All they in this form lading themselves with Treasure, and coming to the King, did

shew

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shew the Manner and Order of their Consideration, to which, *The King not willing to contradict, did ratify all that they had judged.*

23 *Hen. 2.* In Lent there was an Assembly of all the Spiritual and Temporal Barons at *Westminster*, for the determination of that great *Con-* *Selden.*
tention between Alfonso King of Castile, and Sancho King of Navarre, touching divers Castles, and Territories in Spain, which was by compromise submitted to the Judgment of the King of England. And the King, consulting with his Bishops, Earls, and Barons, determined it (as he saith) Himself in the first Person, in the Exemplification of the Judgement.

2 Of King *John* also, that great Controversie touching the Barony that *William of Moubray* claimed against *William of Stutvil*, which had depended from the time of King *Hen. 2.* was ended by the *Council of the Kingdom, and Will of the King: Concilio regni, & voluntate Regis.*

The Lords in Parliament adjudge *William de Weston* to Death for surrendring *Barwick Castle*, but for that *Our Lord the King* was not informed of *Selden.*
the manner of the Judgment, the Constable of the Tower, *Allen Buxall*, was commanded safely to keep the said *William* untill he hath other Commandment from our Lord the King. 4 Ric. 2.

Also the Lords adjudged *John Lord of Gomentz* for surrendring the Towns, and Castles of *Ardee*:
and for that he was a Gentleman, and *Selden.*
Bannaret, and had served the late King, he should be beheaded, and for that our Lord the King was not informed of the manner of the Judgment, the Execution thereof shall be respited untill our Lord the

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King shall be informed. It is commanded to the Constable of the Tower, safely to keep the said John, untill he hath other commandement from our Lord the King.

In the case of *Hen. Spencer* Bishop of *Norwich*, 7 Ric. 2. who was accused for complying with the *French*, and other Failings; the Bishop complained, what was done against him, did not pass by the Assent and Knowledge of the *Peers*; whereupon it was said in Parliament, that *The cognisance and Punishment of his Offence did, of common Right, and ancient Custom of the Realm of England, solely and wholly belong to Our Lord the King, and no other: Le cognisance & punissement de commune droit & ancienne custome de Roialme de Engleterre, seul & per tout appartenir au Roy nostre Seigneur, & a nul autre.*

In the case of the Lord *de la Ware*, the Judgment of the Lords was, *that he should have place next after the Lord Willoughby of Erisbe*, by consent of all, except the Lord *Windsor*: and the Lord Keeper was required to acquaint Her Majesty with the Determination of the *Peers*, and to know her Pleasure concerning the same.

The Inference from these Precedents, is, that the Decisive or Judicial Power exercised in the *Chamber of Peers*, is merely derivative, and subservient to the Supreme Power, which resides in the King, and is grounded solely upon his *grace* and favour: for howsoever the House of Commons do alledge their Power to be founded on the Principles of Nature, in that they are the Representative Body of the Kingdom (as they say) and so being the whole, may take care, and have power by Nature to preserve themselves: yet the House of *Peers* do not, nor can-

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not make any such the least Pretence, since there is no reason in Nature, why amongst a company of men who are all equal, some few should be picked out to be exalted above their Fellows, and have power to Govern those who by Nature are their companions. The difference between a *Peer* and a *Commoner*, is not by *Nature*, but by the *grace of the Prince*: who creates Honours, and makes those Honours to be hereditary (whereas he might have given them for life onely, or during pleasure, or good behaviour) and also annexeth to those Honours the Power of having Votes in Parliament, as hereditary Counsellours, furnished with ampler Privileges than the Commons: All these Graces conferred upon the Peers, are so far from being derived from the Law of Nature, that they are contradictory and destructive of that natural equality and freedom of mankind, which many conceive to be the foundation of the Privileges and Liberties of the House of Commons: there is so strong an opposition between the liberties of *Grace* and *Nature*, that it had never been possible for the two Houses of Parliament to have stood together without mortal Enmity, and eternal jarring, had they been raised upon such opposite foundations: But the truth is, the Liberties and Privileges of both Houses have but one, and the self-same foundation, which is nothing else but the meer and sole Grace of Kings.

Thus much may serve to shew the Nature and Original of the *deliberative* and *decisive* Power of the Peers of the Kingdom.

The matter about which the *deliberative* power is conversant, is generally the Consulting and Advising

sing upon any urgent Business which concerns the King, or Defence of the Kingdom: and more especially sometimes in preparing new Laws; and this Power is grounded upon the Writ.

The *decisive* Power is exercised in giving Judgment in some difficult Cases; but for this Power of the *Peers*, I find no Warrant in their Writ.

Whereas the Parliament is styled the *Supreme Court*, it must be understood properly of the King sitting in the House of Peers in Person; and but improperly of the Lords without him: Every Supreme Court must have the Supreme Power, and the Supreme Power is alwayes Arbitrary; for that is Arbitrary which hath no Superiour on Earth to controll it. The last Appeal in all Government, must still be to an Arbitrary Power, or else Appeals will be *in Infinitum*, never at an end. The *Legislative* Power is an *Arbitrary* Power, for they are *termini convertibiles*.

The main Question in these our dayes is, *Where this Power Legislative remains?* or is placed; upon conference of the Writs of Summons for both Houses, with the Bodies and Titles of our Ancient Acts of Parliament, we shall find the Power of making Laws rests solely in the King. Some affirm, that a part of the *Legislative* Power is in either of the Houses; but besides invincible reason from the Nature of Monarchy it self, which must have the Supreme Power Alone; the constant Antient Declaration of this Kingdom is against it. For howsoever of later years in the Titles and Bodies of our Acts of Parliament it be not so particularly expressed who is the Author and Maker of our Laws, yet in almost all our elder Statutes it is precisely expressed, that they
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are made by the *King Himself*: The general words used of later times, that *Laws are made by Authority of Parliament*, are particularly explained in former Statutes, to mean, *That the King Ordains, the Lords Advise, the Commons Consent*, as by comparing the Writs with the Statutes that expound the Writs, will evidently appear.

Magna Charta begins thus, *Henry by the grace of God, Know ye, that WE of Our Meer and Free Will have given these Liberties.*

In the self-same style runs *Charta de Foresta*, and tells us the Author of it.

The Statute *de Scaccario* 41 H. 3. begins in these words, *The King Commandeth, that all Bailiffs, Sheriffs, and other Officers, &c.* And concerning the Justices of *Chester*, the King Willeth &c. and again, *He Commandeth the Treasurer and Barons of the Exchequer upon their Allegiance.*

The Stat. of *Marlborough*, 52 Hen. 3. goeth thus: *The King hath Made these Acts, Ordinances, and Statutes, which He Willeth to be Observed of all his Subjects, high and low.*

3 Edw. 1. The Title of this Statute is, *These are the ACTS of King EDWARD*; and after it follows, *The KING hath Ordained these ACTS*; and in the first Chapter, *The King Forbiddeth and Commandeth, That none do hurt, damage, or grievance to any Religious Man, or Person of the Church*: and in the thirteenth Chapter, *The King prohibiteth that none do Ravish or take away by force, any Maid within age.*

6 Edw. 1. It is said, *Our Sovereign Lord the King hath established these Acts, commanding they be observed within this Realm*: and in the fourteenth Chap.

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Chap. the words are, *The King of his special Grace granteth, that the Citizens of London shall recover in an Assise, Damage with the Land.*

The Stat. of *West.* 2. saith, Our Lord the King hath ordained, that the *Will of the Giver be observed*: and in the 3. Chap. Our Lord the King hath ordained, that a woman after the Death of her Husband shall recover by a *Writ of Entry.*

The Stat. of *Quo Warranto* saith, Our Lord the King at His Parliament, of his special Grace, and for Affection which he beareth to his Prelates, Earls, and Barons, and others, hath granted, that they that have Liberties by Prescription shall enjoy them.

In the Stat. *de finibus Levatis*, the Kings Words are, *We intending to provide Remedy in our Parliament have ordained, &c.*

28. *Edw.* 1. c. 5. The King Wills, that the Chancellor, and the Justices of the Bench shall follow Him, so that he may have at all times some neer unto him that be learned in the Laws: and in Chap. 24. the words are, Our Lord the King, after full Conference and Debate had with his Earls, Barons, Nobles, and other Great men, by their whole Consent, hath ordained &c.

The Stat. *de Tallagio* (if any such Statute there be) speaks in the Kings Person, *No Officer of Ours: No Tallage shall be taken by Us; We Will and Grant.*

1. *Edw.* 2. begins thus, Our Lord the King Wil-
leth and Commandeth.

The Stat. of 9. the same King, saith, Our Lord the King, by the Assent of the Prelates, Earls, and other great States, hath Ordained,

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10. *Edw. 2.* It is provided by our Lord the King and his Justices.

The Stat. of Carlile saith, *We have sent our Command in writing firmly to be observed.*

1. *Edw. 3.* begins thus, *King Edw. 3. at his Parliament at the request of the Commonalty by their Petition before him, and his Council in Parliament, hath granted, &c. and in the 5th Chap. The King willeth, that no man be charged to arm himself otherwise than he was wont.*

5. *Edw. 3.* Our Lord the King, at the Request of his People, hath established these things, which He Wills to be kept.

9. Of the same King there is this Title, *Our Lord the King by the Assent &c. and by the Advice of his Council being there, hath ordained, &c.*

In his 10 year, it is said, *Because Our Lord King Edw. 3. hath received by the Complaint of the Prelates, Earls, Barons; also at the shewing of the Knights of the Shires, and his Commons by their Petition put in his Parliament, &c. Hath ordained, by the Assent &c. at the Request of the said Knights and Commons, &c.*

The same year in another Parliament you may find, *these be the Articles accorded by Our Lord the King, with the Assent, &c. at the Request of the Knights of the Shires, and the Commons by their Petition put in the said Parliament.*

In the year-Book 22 *Edw. 3. 3. pl. 25.* It is said, *The King makes the Laws by the Assent of the Peers and Commons; and not the Peers and Commons.*

The Stat. of 1. *Ric. 2.* hath this Beginning, *Richard the 2. by the Assent of the Prelates, Dukes, Earls and Barons, and at the Instance and special Request of the Commons, Ordained.*

There

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There being a Statute made 5 Ric. 2. c. 5. against Lollards, in the next year the Commons Petition Him, *Supplient les Commons que come un estatute fuit fait, &c. The Commons beseech, that whereas a Statute was made in the last Parliament, &c. which was never Assented to, nor Granted by the Commons, but that which was done therein was done without their Assent.* In this Petition the Commons acknowledge it a Statute, and so call it, though they assented not to it.

17 Ric. 2. nu. 44. *The Commons desire, some pursuing to make a Law which they conceive hurtful to the Commonwealth; That His Majesty will not pass it.*

As for the Parliaments in Hen. 4. Hen. 5. Hen. 6. Edw. 4. and Ric. 3. Reigns, the most of them do agree in this one Title, *Our Lord the King by the Advice and Assent of His Lords, and at the special Instance and Request of the Commons,* Hath ordained. The Precedents in this Point are so numerous that it were endless to cite them.

The Statutes in Hen. 7. days do for the most part agree, both in the Titles and Bodies of the Acts, in these words: *Our Lord the King by the Assent of the Lords Spiritual and Temporal, and the Commons in Parliament assembled, and by the Authority of the same,* hath ordained.

Unto this Kings time we find the Commons very often petitioning, but not petitioned unto. The first Petition made to the Commons that I meet with among the Statutes, is but in the middle of this King Hen 7. Reign, which was so well approved, that the Petition it self is turned into a Statute: It begins thus, *To the Right Worshipful Commons in this present Parliament assembled:*

Sheweth

Sheweth to your discreet Wisdoms, the Wardens of the Fellowship of the Craft of Upholsters within London, &c. This Petition, though it be directed to the Commons in the Title; yet the Prayer of the Petition is turned to the King, and not to the Commons; for it concludes, therefore it may please the Kings Highness by the Advice of the Lords Spiritual and Temporal, and his Commons in Parliament, &c.

Next for the Statutes of Hen. 8. they do most part agree, both in their Titles, and the Bodies of the Acts, with those of his Father King Hen. 7.

Lastly, In the Statutes of Edw. 6. Qu. Mary, Q. Elizabeth, K. James, and of our Sovereign Lord the King that now is, there is no Mention made in their Titles of any Assent of Lords and Commons, or of any Ordaining by the King, but only in general terms it is said, *Acts made in Parliament*; or thus, *At the Parliament were Enacted*: yet in the Bodies of many of these Acts of these last Princes, there is sometimes Mention made of *Consent of Lords and Commons*, in these or the like words: *It is Enacted by the King, with the Assent of the Lords and Commons*; Except only in the Statutes of our Lord King Charles, wherein there is no Mention, that I can find, of any Consent of the Lords and Commons; or Ordaining by the King: But the words are, *Be it Enacted by Authority of Parliament*: or else, *Be it Enacted by the King, the Lords Spiritual and Temporal, and Commons*; as if they were all Fellow-Commissioners.

Thus it appears, that even till the time of K. Ed. 6. who lived but in our Fathers dayes, it was punctually expressed in every King's Laws, that the Statutes & Ordinances were made by the King. And wisthal we
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may see by what degrees the Styles, and Titles of Acts of Parliament have been varied, and to whose Disadvantage. The higher we look, the more absolute we find the Power of Kings in Ordaining Laws: nor do we meet with at first so much as the Assent or Advice of the Lords mentioned. Nay, if we cast our eye upon many Statutes of those that be of most Antiquity, they will appear as if they were no Laws at all; but as if they had been made only to teach us, that the Punishments of many Offences were left to the meere pleasure of Kings. The *punitive* part of the Law, which gives all the Vigour and Binding Power to the Law, we find committed by the Statutes to the Kings meer Will and Pleasure, as if there were no Law at all. I will offer a few Precedents to the Point.

3 *Edw. 1. c. 9.* saith, *That Sheriffs, Coroners, and Bailiffs, for concealing of Felonies, shall make grievous Fines at the Kings pleasure.*

Chap. 13. Ordains, *That such as be found culpable of Ravishing of Women, shall Fine at the Kings pleasure.*

Chap. 15. saith, *The penalty for detaining a Prisoner that is mainpernable, is a Fine at the Kings pleasure, or a grievous Amercement to the King; and, he that shall take Reward for deliverance of such, shall be at the Great Mercy of the King.*

Chap. 20. *Offenders in Parks or Ponds shall make Fines at the Kings pleasure.*

Chap. 25. *Committers of Champerty, and Extortioners, are to be punished at the Kings pleasure.*

Chap. 31. *Parveyors, not paying for what they take, shall be Grievously punished at the Kings pleasure.*

Chap.

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Chap. 32. The King shall punish Grievously the Sheriff, and him that doth maintain Quarrels.

Chap. 37. The King shall grant Attains in Plea of Land where it shall seem to him necessary.

7 Edw. 1. saith, Whereas of late, before certain Persons deputed to Treat upon Debates between Us and certain Great Men, it was accorded, that in our next Parliament provision shall be made by Us, and the common Assent of the Prelates, Earls, and Barons, that in all Parliaments for ever, every man shall come without Force and Armour. And now in our next Parliament the Prelates, Earls, Barons, and Commonalty have said, That to US it belongeth, through Our Royal Signory, straitly to defend Force of Armour at all times, when it shall please Us, and to punish them which shall do otherwise, and hereunto they are bound to Aid Us their Sovereign Lord at all Seasons when Need shall be.

13 Edw. 1. Takers away of Nuns from Religious Houses, Fined at the Kings Will.

If by the Default of the Lord that will not avoid the Dike, Underwoods, and Bushes in High-ways, murder be done, the Lord shall make Fine at the Kings pleasure.

28 Edw. 1. If a Gold-smith be attainted for not Assaying, Touching, and Working Vessels of Gold, he shall be punished by Ransome at the Kings pleasure.

2 Hen. 4. The Commons desire they may have Answer of their Petitions before the gift of any Subsidy; to which the King answers, He would confer with the Lords, and do what should be best according to their Advice; and the last day of Parliament He gave this Answer, That that manner of Doing had not been Seen,

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nor used in no time of his Progenitors or Predecessors, that they should have any Answer of their Petitions, or knowledge of it before they have shewed, and finished all their other Business of Parliament, be it of any Grant, Business, or otherwise, and therefore the King would not in any wayes change the Good Customs and Usages Made and Used of Antient Times.

5 Hen. 4. c. 6. *Whereas one Savage did Beat and maim one Richard Chedder Esquire, Menial Servant to Tho. Brook, Knight of the Shire for Somerset-shire, the Statute saith, Savage shall make Fine and Ransom at the Kings Pleasure.*

8 Hen. 4. It is said, *POTESTAS PRINCIPIS NON EST INCLUSA LEGIBUS*, the Power of the Prince is not included in the Laws.

13 Hen. 4. nu. 20. we read of a Restitution in Blood, and Lands of William Lasenby, by the King, by the Assent of the Lords Spiritual, and Commons; omitting the Lords Temporal.

2 Hen. 5. in a Law made, there is a Clause, That it is the Kings Regality to grant or deny such of their Petitions as pleaseth Himself.

6 Hen. 6. c. 6. *An Ordinance was made for to endure As long as it shall please the King.*

11 Hen. 7. c. 1. hath this Law, *The King our Sovereign Lord, calling to His remembrance the duty of Allegiance of His Subjects of this His Realm, and that by reason of the same they are bound to serve their Prince and Sovereign Lord for the time being in His Wars, for the Defence of Him, and the Land, against every Rebellion, Power, and Might reared against Him, and with Him to enter and abide in Service in Battel, if Case so require; and that for the same Service, what fortunes*

ever fall by chance in the same Battel, against the Mind and Will of the Prince (as in this Land sometimes passed hath been seen) that it is not reasonable, but against all Laws, Reason, and good Conscience, that the said Subjects, going with their Sovereign Lord in Wars, attending upon Him in His Person, or being in other places, by his Commandement within the Land, or without, any thing should lose or forfeit, for doing their true Duty and Service of Allegiance; Be it therefore Enacted, That no Person that shall attend upon the King, and do Him true Service, shall be attainted therefore of Treason, or any other Offence by Act of Parliament, or otherwise.

Also the 18 Chap. of the same Year saith, Where every Subject by the Duty of his Allegiance is bounden to Serve and Assist his Prince and Sovereign Lord at all Seasons when need shall require, and bound to give attendance upon his Royal Person, to defend the same when He shall fortune to go in Person in War for Defence of the Realm, or against His Rebels and Enemies, for the Subduing and Repressing of them, and their malicious purpose.

Christopher Wray, Serjeant at Law, chosen Speaker, 13 Eliz. in his Speech to Her Majesty, said, that for the orderly Government of the Commonwealth, three things were necessary:

1. Religion.
2. Authority.
3. Law.

By the first, we are taught not only our Duty to God, but to obey the Queen, and that not only in Temporals, but in Spirituals, in which Her Power is absolute.

Mr. Grivel in the 35 Eliz. said in Parliament, He wished not the making of many Laws; since the more we

make, the less Liberty we have our selves; Her Majesty not being bound by them.

For further proof that the Legislative Power is proper to the King, we may take notice, that in ancient time, as Sir *Edw. Coke* saith, *All Acts of Parliament were in form of Petitions*: if the Petitions were from the Commons, and the Answer of them the King's, it is easie thereby to judge who made the Act of Parliament: Also Sir *Jo. Glanvil* affirms, that in former times the course of Petitioning the King was this, *The Lords and Speaker, either by Words or Writing, preferr'd their Petition to the King; this then was called the Bill of the Commons, which being received by the King, part He received, part He put out, and part be ratified; for as it came from Him, it was drawn into a Law.*

Also it appears, that *Provisions, Ordinances, and Proclamations*, made heretofore out of Parliament, have been alwayes acknowledged for Laws and

Statutes: We have amongst the printed Statutes, one called the *Statute of Ireland*, dated at *Westminster*, 9 Feb. 14 Hen. 3. which is nothing but a *Letter of the King to Gerard Son of Maurice Justicer of Ireland.*

The Explanations of the Statute of Gloucester made by the King and His Justices only, were received alwayes for Statutes, and are still printed with them.

Also the Statute made for the correction of the twelfth Chapter of the Statute of Gloucester, was Signed under the Great Seal, and sent to the Justices of the Bench after the manner of a Writ Patent, with a certain Writ closed, dated by the Kings hand at *Westminster*, 2 Maii 9 Edw. 1. requiring that *they should do and execute all and every thing contained*

tained in it, though the same do not accord with the Stat. of Gloucester in all things.

The Provisions of Merton made by the King at an Assembly of Prelates, and the greater part of the Earls and Barons, for the Coronation of the King, and his Queen Elinor, are in the form of a Proclamation, and begin *Provisum est in Curia domini Regis apud Merton.*

19 Hen. 3. a Provision was made, *de assisa presentationis*, which was continued and allowed for a Law untill the Stat. of West. 2. which provides the contrary in expresse words.

In the old Statutes it is hard to distinguish what Laws were made by Kings in Parliament, and what out of Parliament: when Kings called Peers only to Parliament, and of those how many, or whom they pleased, (as it appears anciently they did) it was no easie matter to put a difference between a Council-Table, and a Parliament: or between a Proclamation and a Statute: Yet it is most evident, that in old times there was a distinction between the Kings special or Privy Council, and His Common Council of the Kingdom: and His special Council did sit with the Peers in Parliament, and were of great and extraordinary Authority there.

In the Stat. of Westm. 1. it is said, *These are the Acts of K. Edw. 1. made at His first Parliament by His Council, and by the Assent of Bishops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Realm.*

The Stat. of Aſton Burnell hath these words, *The King for Himself, and by His Council, hath Ordained and Established.*

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In articulis super Chartas, when the Great Charter was confirmed at the Request of the Prelates Earls, and Barons, are found these two provisions,

1. *Nevertheless the King and his Council do not intend y reason of this Statute to diminish the Kings Right.*

2. *Notwithstanding all these things before-mentioned, or any part of them, both the King and his Council, and all they that were present, Will and intend, that the Right and Prerogative of His Crown shall be saved to Him in all things.*

The Stat. of Escheators hath this Title, *At the Parliament of our Sovereign Lord the King, By His Council it was agreed, and also by the King himself commanded.*

1 *Edw. 3.* where *Magna Charta* was confirmed, this Preamble is found, *At the request of the Commonalty, by their Petition made before the King and His Council in Parliament, by the Assent of the Prelates, Earls, and Barons, &c.*

The Statute made at York 9 *Edw. 3.* goeth thus : *Whereas the Knights, Citizens, and Burgessees desired Our Sovereign Lord the King in His Parliament by their Petition, &c. Our Sovereign Lord the King, desiring the profit of His People, By the Assent of His Prelates, Earls, Barons, and other Nobles of His Realm, and by the Advice of His Council being there, Hath Ordained.*

25. *Edw. 3.* In the Statute of Purveyors, where the King, at the request of the Lords and Commons, made a Declaration what Offences should be adjudged Treason: It is there further said, *if per-case any man ride Armed with Men of Arms against any other to slay him, or rob him, It is not the Mind of the King, or of His Council : that in such cases it shall be adjudged Treason.* By this Statute it appears, that even

even in the case of *Treason*, which is the Kings own Cause, as, *whereas a man doth compass, or imagine the Death of Our Lord the King, or a man do wage War against Our Lord the King in His Realm, or be adherent to the Kings Enemies in his Realm, giving to them aid or comfort in the Realm, or elsewhere ; in all these cases it is the Kings Declaration onely that makes it to be Treason : and though it be said, that Difficult points of Treason shall be brought and shewed to the King, and His Parliament, yet it is said, it is the mind of the King and his Council, that determines what shall be adjudged Treason, and what Felony, or Trespasse.*

27 *Edw. 3.* the Commons presenting a Petition to the King which the Kings Council did mislike, were content thereupon to amend and explain their Petition: the Petition hath these words, *To their most redoubted Sovereign Lord the King, Praying, Your said Commons, that whereas they have prayed him to be discharged of all manner of Articles of the Eyre &c. which Petition seemeth to his Council to be prejudicial unto him, and in Disinherison of his Crown if it were so generally granted. His said Commons not willing nor desiring to demand things of Him, or of his Crown perpetually, as of Escheats, &c. But of Trespases, Misprisions, Negligences, Ignorances, &c.*

And as in Parliaments the Kings Council were of Supereminent Power, so out of Parliament Kings made great Use of them.

King *Edw. 1.* finding that *Bogo de Clare* was discharged of an Accusation brought against him in Parliament, commanded him nevertheless to appear before him and his Council, *ad faciendum & recipiendum quod per Regem & ejus Concilium fuerit faci-*

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faciendum, and so proceeded to the Examination of the whole Cause, 8 *Edw.* 1.

Edw. 3. In the Star-chamber (which was the ancient Councel-table at *Westminster*) upon the complaint of *Eliz. Audley*, commanded *James Audley* to appear before *Him* and *His Councel*; and determined a Controversie between them, touching Land contained in her Jointure, *Rot. claus. de An.* 41 *Edw.* 3.

Hen. 5. In a Suit before *Him* and *His Councel*, For the Titles of the Manors of *Serre* and *St. Lawrence* in the Isle of *Thanet* in *Kent*, took order for the Sequestering the Profits till the Right were tried.

Hen. 6. commanded the Justices of the Bench to stay the Arraignment of one *Verney* in *London*, till they had other Commandment from *Him* and *His Councel*, 34 *Hen.* 6. *rot.* 37. in *Banco*.

Edw. 4. and his Councel in the Star-Chamber heard the Cause of the Master and poor Brethren of *Saint Leonard's* in *York*, complaining that *Sir Hugh Hastings*, and others, withdrew from them a great part of their Living, which consisted chiefly upon the having of a Thrave of Corn of every Plow-land within the Counties of *York*, *Westmorland*, *Cumberland*, and *Lancashire*, *Rot. pat. de an.* 8. *Edw.* 4. *part.* 3. *memb.* 14.

Hen. 7. and his Councel in the Star-Chamber, decreed, that *Margery* and *Florence Becket* should sue no further in their cause against *Alice Radley* Widow, for Lands in *Wolwich* and *Plumsted* in *Kent*, for as much as the matter had been heard first before the Councel of *Edw.* 4. after that before the President of the Requests of that King *Hen.* 7. and then lastly before the Councel of the said King, 1 *Hen.* 7.

In the time of *Hen. 3.* an *Order* or *Provision* was made by the *Kings Council*, and it was pleaded at the Common Law in Bar to a Writ of Dower; the Plaintiffs Attorney could not deny it, and thereupon the Judgment was, *ideo sine die*. It seems in those days an Order of the Kings Council, was either parcell of the Common Law, or above it.

Also we may find, the Judges have had Regard, that before they would resolve or give Judgment in new Cases, they consulted with the Kings Privy Council.

In the case of *Adam Brabson* who was assaulted by *R. W.* in the Presence of the Justices of Assize at *Westminster*, the Judges would have the *Advice of the Kings Council*: for in a like Case, because *R. C.* did strike a Juror at *Westminster* which passed against one of his Friends, *It was adjudged by all the Council that his right hand should be cut off, and his Lands and Goods forfeited to the King.*

Green and *Thorp* were sent by the Judges to the *Kings Council*, to demand of them whether by the *Stat. of 14 Edw. 3. 16.* a word may be amended in a Writ, and it was answered that a word may be well amended, although the *Stat.* speaks but of a Letter or Syllable.

In the Case of *Sir Thomas Ogthred*, who brought a *Formedon* against a poor man and his Wife; they came and yielded to the Demandant, which seemed suspicious to the Court; whereupon Judgment was said, and *Thorp* said that in the like case of *Giles Blacket* it was spoken of in Parliament, and we were commanded that when any like should come we should not go to Judgment without good Advice; therefore the Judges Conclusion was, *Sues au coun-*

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seil & comment ils voilent que nous devonns faire, nous volums faire & autrement nient en cest case; sue to the Councel, and as they will have us to do, we will do; and otherwise not in this Case, 39 Edw. 3.

Thus we see the Judges themselves were guided by the *Kings Councel*, and yet the Opinions of Judges have guided the Lords in Parliament in Point of Law.

All the Judges of the Realm, Barons of Exchequer of the Quoif; the Kings learned Councel, and the Civilians, Masters of Chancery, are called Temporal Assistants by Sir *Edw. Coke*, and though he deny them Voices in Parliament, yet he confesseth, that by their Writ they have Power both to treat, and to give Councel. I cannot find that the Lords have any other Power by their Writ: the Words of the Lords Writ are, *That you be present with Us the Prelates, Great men, and Peers, to treat and give your Councel*: The words of the Judges Writ are, *that you be present with Us, and others of the Councel* (and sometimes with *Us* only) to treat and give your Councel.

The Judges usually joyned in Committees with the Lords in all Parliaments, even in Queen *Eliz.* Reign, untill her 39th Year; and then upon the 7th of November, the Judges were appointed to attend the Lords. And whereas the Judges have Liberty in the upper House it self, upon Leave given them by the L. Keeper, to cover themselves, now at Committees they sit always uncovered.

The Power of Judges in Parliament is best understood, if we consider how the judicial Power of *Peers* hath been exercised in matter of Judicature: we may find it hath been the Practice, that

that though the Lords in the Kings Absence give Judgment in Point of Law, yet they are to be directed and regulated by the Kings Judges, who are best able to give Direction in the difficult Points of the Law; which ordinarily are unknown to the Lords. And therefore, if any Errour be committed in the *Kings Bench*, which is the highest ordinary Court of Common Law in the Kingdom, that Errour must be redressed in Parliament. And the Manner is, saith the Lord Chancellor Egerton, *If a Writ of Errour be sued in Parl. upon a Judgment given by the Judges in the Kings Bench, the Lords of the higher House alone, (without the Commons) are to examine the Errours. The Lords are to proceed according to the Law, and for their Judgments therein they are to be informed by the Advice and Counsel of the Judges, who are to inform them what the Law is, and to direct them in their Judgment; for the Lords are not to follow their own Discretion or Opinion otherwise.*

28 Hen. 6. the Commons made sute that *W. de la Pool D. of Suffolk*, should be committed to Prison for many Treasons, and other Crimes; the Lords of the higher House were doubtful what Answer to give; the Opinion of the Judges was demanded, their Opinion was, that he ought not to be committed, for that the Commons did not charge him with any particular Offence, but with general Reports and Slanders: this Opinion was allowed.

31. Hen. 6. A Parliament being prorogued, in the Vacation the Speaker of the House of Commons was condemned in a thousand Pounds Damages in an Action of Trespass, and committed to Prison in Execution for the same: when the Parliament was

was re-assembled, the Commons made sute to the King, and Lords, to have their Speaker delivered. The Lords demanded the Opinion of the Judges, whether he might be delivered out of Prison by Privilege of Parliament; upon the Judges Answer it was concluded, that *the Speaker should remain in Prison according to the Law, notwithstanding the Privilege of Parliament, and that he was Speaker*; which Resolution was declared to the Commons by Moyle the Kings Serjeant at Law, and the Commons were commanded in the Kings name by the Bishop of Lincoln (in the absence of the Arch-bishop of Canterbury, then Chancellor) to chuse another Speaker.

7 Hen. 8. A Question was moved in Parliament, *Whether Spiritual Persons might be convented before Temporal Judges for criminal Causes?* there Sir John Fineux and the other Judges delivered their Opinion, *that they might and ought to be; and their Opinion allowed and maintained by the King and Lords, and Dr. Standish who before had holden the same Opinion, was delivered from the Bishops.*

I find it affirmed, *that in Causes which receive Determination in the House of Lords, the King hath no Vote at all, no more than in other Courts of ministerial Jurisdiction.* True it is, the King hath no Vote at all if we understand by *Vote*, a *Voice among others*: for he hath no partners with *Him* in giving Judgment. But if by *no Vote* is meant *he hath no Power to judge*; we dispoil him of his Sovereignty: It is the chief Mark of Supremacy to judge in the highest Causes, and last Appeals. This the Children of *Israel* full well understood, when they petitioned for a *King to judge them*; if the *dernier resort* be to the Lords alone, then they have the Supremacy.

cy. But as *Moses* by chusing Elders to judge in small Causes, did not thereby lose his Authority to be Judge himself when he pleased, even in the smallest matters; much less in the greatest, which he reserved to himself: so Kings by delegating others to judge under them, do not thereby denude themselves of a Power to judge when they think good.

There is a Distinction of these times, that *Kings themselves may not judge, but they may see and look to the Judges, that they give Judgment according to Law,* and for this Purpose only (as some say) Kings may sometimes sit in the Courts of Justice. But it is not possible for Kings to see the Laws executed, except there be a Power in Kings both to judge when the Laws are duely executed, and when not; as also to compell the Judges if they do not their Duty. Without such Power a King sitting in Courts is but a Mockery, and a Scorn to the Judges. And if this Power be allowed to Kings, then their Judgments are supream in all Courts. And indeed our *Common Law*, to this Purpose doth presume that the King bath all Laws within the Cabinet of His Breast, in *Scrinio pectoris*, saith *Crompton's Jurisdiction.* 108.

When several of our Statutes leave many things to the *Pleasure of the King*, for us to interpret all those Statutes of the *Will and Pleasure of the Kings Justices only*, is to give an absolute Arbitrary Power to the Justices in those Cases wherein we deny it to the King.

The Statute of 5 *Hen. 4. c. 2.* makes a Difference between the *King*, and the *Kings Justices*, in these words, *Divers notorious Felons be indicted of divers Felonies, Murders, Rapes: and as well before the Kings Justices, as before the King himself, arraigned of the same Felonies.*

I read

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I read, that in *An. 1256. Hen. 3.* sate in the *Exchequer*, and there set down Order for the Appearance of *Sheriffs*, and bringing in their *Accounts*; there was five Marks set on every *Sheriff's* Head for a Fine, because they had not distrained every Person that might dispend fifteen pounds Lands by the Year, to receive the Order of *Knighthood*, according as the same *Sheriffs* were commanded.

In *Michaelmas Term, 1462. Edw. 4.* sate three dayes together in open Court in the *Kings Bench*.

For this point there needs no further Proofs, because *Mr. Pryn* doth confess, that *Kings themselves* have sate in Person in the *Kings Bench*, and other Courts, and there given Judgment, p. 32. Treachery and Disloyalty, &c.

Notwithstanding all that hath been said for the Legislative and Judicial Power of Kings, *Mr. Pryn* is so far from yielding the King a Power to make Laws, that he will not grant the King a power to hinder a Law from being made; that is, he allows Him not a *Negative Voice* in most cases, which is due to every other, even to the Meanest Member of the House of Commons in his Judgment.

To prove the King hath not a *Negative Voice*, his main, and in truth, his only Argument insisted on, is a *Coronation Oath*, which is said anciently some of our Kings of England have taken, wherein they grant to defend and protect the just Laws and Customs, which the *Vulgar* hath, or shall chuse: *Justas Leges & Consuetudines quas vulgus elegerit*: Hence *Mr. Pryn* concludes, that the King cannot deny any Law which the Lords and Commons shall make choice of; for so he will have *vulgus* to signifie.

Though

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Though neither our *King*, nor many of His Predecessors ever took this Oath, nor were bound to take it, for ought appears; yet we may admit that our King hath taken it; and answer, we may be confident, that neither the Bishops, nor Privy Council, nor Parliament, nor any other whosoever they were that framed, or penn'd this Oath, ever intended in this word *Vulgus* the *Commons* in Parliament, much less the *Lords*: they would never so much disparage the Members of Parliament, as to disgrace them with a Title both base and false: it had been enough, if not too much, to have called them *Populus*, the *People*; but *Vulgus*, the *Vulgar*, the *rude Multitude* (which hath the Epithet of *Ignobile Vulgus*) is a word as dishonourable to the Composers of the Oath to give, or for the King to use, as for the Members of the Parliament to receive; it being most false: for the *Peers* cannot be *Vulgus*, because they are the prime Persons of the Kingdom: next, the Knights of the Shires are, or ought to be *notable Knights*, or *notable Esquires*, or *Gentlemen*, *born in the Counties*, *as shall be able to be Knights*: then the *Citizens and Burghesses are to be most sufficient*, none of these can be *Vulgus*: even those Free-holders that chuse Knights, are the best and ablest men of their Counties; there being for every Free-holder, above ten of the Common People to be found to be termed the *Vulgar*: Therefore it rests that *vulgus* must signifie the *vulgar* or *common People*, and not the *Lords and Commons*.

But now the doubt will be, what the Common People, or *vulgus*, out of Parliament, have to do to chuse Laws? The Answer is easie and ready; there

there goeth before *quas vulgus*, the Antecedent *Consuetudines*, that is, the Customs which the *Vulgar* hath, or shall chuse. Do but observe the Nature of Custom, and it is the *Vulgar* or Common People only who chuse Customs: Common Usage time out of mind creates a Custom, and the commoner an Usage is, the stronger and the better is the Custom: no where can so common an Usage be found, as among the *Vulgar*, who are still the far greatest part of every Multitude: if a Custom be common through the whole Kingdom, it is all one with the Common Law in England, which is said to be *Common Custom*. Thus in plain Terms to protect the Customs which the *Vulgar* chuse, is to swear to protect the Common Laws of England.

But grant that *Vulgus* in the Oath, signifies Lords and Commons, and that *Consuetudines* doth not signify Customs, but Statutes, (as Mr. Pryn for a desperate Shift affirms,) and let *elegerit* be the Future, or Preterperfect Tense, even which Mr. Pryn please, yet it cannot exclude the Kings negative Voice; for as *Consuetudines* goeth before *quas vulgus*, so doth *justas* stand before *leges & consuetudines*: so that not all Laws, but only all just Laws are meant. If the sole Choice of the Lords and Commons, did oblige the King to protect their Choice, without Power of Denial, what Need, or why is the Word *justas* put in, to raise a Scruple that some Laws may be unjust? Mr. Pryn will not say that a Decree of a General Council, or of a Pope is infallible, nor (I think) a Bill of the Lords and Commons is infallible, just, and impossible to erre; if he do, Sir Edward Coke will tell him that *Parliaments have been utterly deceived, and that in cases of greatest Moment, even in*
case

case of High Treason: and he calls the Statute of 1 Hen. 7. *an unjust and strange Act*. But it may be Mr. Pryn will confess that Laws chosen by the Lords and Commons may be unjust, so that the Lords and Commons themselves may be the Judges of what is just, or unjust. But where a King by Oath binds his Conscience to *protect just Laws*, it concerns him to be satisfied in his own Conscience, that they be just, and not by an implicate Faith, or blind Obedience: no man can be so proper a Judge of the Justness of Laws, as he whose Soul must lie at the Stake for the Defence and Safeguard of them.

Besides, in this very Oath the King doth swear, to do *equal and right Justice and Discretion, in Mercy and Truth in all His Judgments: facies fieri in omnibus judiciis tuis equam & rectam justitiam & discretionem in Misericordia & Veritate*: if we allow the King *Discretion and Mercy in his Judgments*, of Necessity he must judge of the Justness of the Laws.

Again, the clause of the Oath, *quas vulgus elegerit*, doth not mention the assenting unto, or granting any new Laws, but of holding, protecting, and strengthening with all his Might, the just Laws that were already in Being: there were no need of Might or Strength, if assenting to new Laws were there meant.

Some may wonder, why there should be such Labouring to deny the King a negative Voice, since a negative Voice is in it self so poor a thing; that if a man had all the Negative Voices in the Kingdom, it would not make him a King; nor give him Power to make one Law: a negative Voice is but a privative Power, that is, no Power at all to do or act any

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any thing; but a Power only to hinder the Power of another. *Negatives* are of such a malignant or destructive Nature, that if they have nothing else to destroy, they will, when they meet, destroy one another, which is the reason why two *Negatives* make an *Affirmative*, by destroying the *Negation* which did hinder the *Affirmation*: A King with a *Negative Voice* only, is but like a *Syllogisme* of *pure negative Propositions*, which can conclude nothing. It must be an *Affirmative Voice* that makes both a King, and a Law, and without it there can be no imaginable Government.

The reason is plain why the *Kings negative Voice* is so eagerly opposed: for though it give the King no Power to do any thing; yet it gives him a Power to hinder others: though it cannot make Him a King, yet it can help him to keep others from being Kings.

For Conclusion of this Discourse of the *negative Voice of the King*, I shall oppose the Judgment of a *Chief Justice of England*, to the Opinion of him that calls himself an *utter Barister of Lincolns Inn*, and let others judge who is the better Lawyer of the two: the words are *Bracton's*, but concern Mr. Pryn to lay them to heart; *Concerning the Charters and Deeds of Kings, the Justices nor private men neither ought, nor can dispute; nor yet if there rise a Doubt in the Kings Charter, can they interpret it; and in doubtful and obscure Points, or if a word contain two Senses, the Interpretation, and Will of Our Lord the King is to be expected, seeing it is his part to interpret, who makes the Charter*: full well Mr. Pryn knows, that when *Bracton* writ, the Laws that were then made, and strived for, were called the *Kings Charters*, as *Magna Charta*, *Charta de Foresta*, and others: so that in
Bra-

Bracton's Judgment the King hath not only a Negative Voice to hinder, but an Affirmative, to make a Law, which is a great deal more than Master Pryn will allow him.

Not only the Law-maker, but also the sole Judge of the People is the King, in the Judgment of Bracton; these are his words: *Rex & non alius debet judicare, si solus ad id sufficere possit*, the King and no other ought to judge, if He alone were able. Much like the words of Bracton, speaketh Briton, where, after that he had shewed that the King is the Viceroy of God, and that He hath distributed his Charge into sundry portions, because He alone is not sufficient to hear all Complaints of His People, then he addeth these words, in the Person of the King: *Nous volons que nostre jurisdiction soit sur tous Jurisdictions, &c.* We Will that Our Jurisdiction be above all the Jurisdictions of Our Realm, so as in all manner of Felonies, Trespases, Contracts, and in all other actions Personal or Real We have Power to yield, or cause to be yielded, such Judgments as do appertain without other Process, wheresoever we know the right Truth as Judges.

Neither was this to be taken, saith Mr. Lambard, to be meant of the Kings Bench, where there is only an imaginary presence of His Person, but it must necessarily be understood of a Jurisdiction remaining and left in the King's Royal Body and Brest, distinct from that of His Bench, and other ordinary Courts; because he doth immediately after, severally set forth by themselves, as well the authority of the Kings Bench, as of the other Courts.

And that this was no new-made Law, Mr. Lambard puts us in mind of a Saxon Law of King Ed-

gars. *Nemo in lite Regem appellato, &c.* Let no man a Suit appeal unto the King, unless he cannot get Right at home, but if that Right be too Heavy for him, then let him go to the King to have it eased. By which it may evidently appear, that even so many years ago there might be Appellation made to the Kings Person, whensoever the Cause should enforce it.

The very like Law in Effect is to be seen in the Laws of *Cannus* the Dane, sometimes King of this Realm, out of which Law Master Lambard gathers, that the King Himself had a High Court of Justice, wherein it seemeth He sate in Person, for the words be, Let him not seek to the King, and the same Court of the King did judge not only according to meer Right and Law, but also after Equity and good Conscience.

For the Close, I shall end with the Suffrage of our late Antiquary Sir Henry Spelman, in his Glossary, he saith, *Omnis Regni Justitia solius Regis est, &c.* All Justice of the Kingdom is only the King's, and He alone, if He were able, should Administer it; but that being impossible, He is forced to delegate it to Ministers, whom he bounds by the limits of the Laws; the positive Laws are only about Generals; in particular Cases, they are sometimes too strict, sometimes too remiss; and so, oft Wrong instead of Right will be done, if we stand to strict Law: also Causes hard and difficult daily arise, which are comprehended in no Law-book, in those there is a necessity of running back to the King, the Fountain of Justice, and the Vicegerent of God himself, who in the Commonwealth of the Jews took such Causes to His own cognisance, and left to Kings not only the Example of such Jurisdiction, but the Prerogative also.

Of Privilege of Parliament.

What need all this ado, will some say, to sift out what is comprised in the Writ for the Election of the Commons to Parliament, since it is certain, though the *Writ* doth not, yet *Privilege of Parliament* gives sufficient Power for all Proceedings of the Two Houses? It is answered, that what slight Esteem soever be made of the Writ, yet in all other cases the *Original Writ* is the Foundation of the whole business, or action: and to vary in Substance from the Writ, makes a nullity in the Cause, and the Proceedings thereupon: and where a Commissioner exerciseth more Power than is warranted by his Commission, every such Act is void, and in many Cases punishable: yet we will lay aside the Writ, and apply our selves to consider the Nature of *Privilege of Parliament*. The Task is the more difficult, for that we are not told what the number of Privileges are, or which they be; some do think that as there be dormant Articles of Faith in the *Roman Church*, which are not yet declared; so there be likewise Privileges dormant in the House of Commons, not yet

revealed, we must therefore be content in a generality to discourse of the Quality or Condition of Privilege of Parliament, and to confine our selves to these three points:

1. That Privilege of Parliament gives no power; but only helps to the execution of the Power given by the Writ.

2. That the Free-holders by their Elections give no Privilege.

3. That Privilege of Parliament is the Gift of the King.

First, The End or Scope of Privilege of Parliament is not to give any Power to do any publick Act, not warranted by the Writ: but they are intended as Helps only to enable to the Performance of the Duty enjoyned, and so are subservient to the Power comprised in the Writ: For Instance, the *grand Privilege of Freedom from Arrests* doth not give any Power at all to the *House of Commons* to do any act; but by taking away from the Free-holders and other Subjects the Power of Arrests, the Commons are the better inabled to attend the Service to which they are called by the King.

In many other Cases the Servants, or Ministers of the King are privileged, and protected much in the same Nature. The
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Servants in household to the King may not be arrested without special Licence: Also the Officers of the Kings Courts of Justice, have a Privilege not to be sued in any other Court but where they serve and attend; and to this Purpose they are allowed a *Writ of Privilege*. Likewise all such as serve the King in his Wars, or are employed on forreign Affairs for him, are protected from Actions and Sutes. Nay the Kings Protection descends to the privileging even of *Laundresses, Nurses, and Midwives*, if they attend upon the Camp, as Sir *Edw. Coke* saith, *quia Lotrix, seu Nutrix, seu obstetrix*. Besides the King protects his Debtors from Arrests of the Subject till his own Debts be paid.

These sorts of Protections are Privileges the Common Law takes notice of, and allows: and hath several Distinctions of them; and some are *Protections, quia profecturus*, and others are, *quia moraturus*: some are with a Clause of *volumus* for Stay of Suits: others with a Clause of *Nolumus* for the safety of mens Persons, Servants, and Goods: and the Kings Writs do vary herein according to the Nature of the Business.

But none of these Privileges or Protections do give any Power; they are not po-

sitive, but *privative*: they take away and deprive the Subject of the Power, or Liberty to arrest, or sue, in some cases only: no Protection or Privilege doth defend in point of *Treason*, *Felony*, or *Breach* of the *Peace*: Privileges are directly contrary to the Law, for otherwise they should not be Privileges, and they are to be interpreted in the strictest manner, as being *odious and contrary* to Law: we see the Use of Privileges; they do but serve as a Dispensation against Law, intended originally, and principally for the expediting of the Kings Business; though secondarily, and by accident there do sometimes redound a Benefit by them to the Parties themselves that are protected. Strictly, and properly every Privilege must be against a publick or common Law, for there is no Use or Need of a *private Law* to protect, where there is no *publick Law* to the contrary: Favours and Graces which are only *besides*, and *not against* the Law, do not properly go under the name of *Privileges*, though common Use do not distinguish them: I know no other Privilege that can be truly so called, and to belong to the House of Commons, which is so vast and great, as this Privilege of their *Persons*, *Servants*, and *Goods*: this being indeed against the Common Law,
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and doth concern the whole Kingdom to take notice of it, if they must be bound by it.

Touching this grand Privilege of Freedom from Arrests, I read that in the 33 *Hen. 8.* the Commons did not proceed to the Punishment of Offenders for the breach of it, untill the Lords referred the Punishment thereof to the Lower House. The Case is thus reported, *George Ferrers* Gentleman, Servant to the King, and Burgesse for *Plymouth*, going to the Parliament House was arrested in *London*, by Process out of the Kings Bench for Debt, wherein he had before been condemned as Surety for one *Welden* at the Sute of one *White*: which Arrest signified to Sir *Thomas Moyl* Speaker, and to the rest; the Serjeant (called *Saint-Johns*) was sent to the Counter in *Breadstreet* to demand *Ferrers*: The Officer of the Counter refused to deliver him, and gave the Serjeant such ill Language that they fall to an Affray: the Sheriff coming, taketh the Officers part, the Serjeant returned without the Prisoner: This being related to the Speaker and Burgessees, they would sit no more without their Burgeses; and rising, repaired to the Upper House, where the Case was declared by the Speaker before Sir *Thomas Audley Chancellor*, and the Lords and

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Judges there assembled, who judging the Contempt to be very great, referred the Punishment thereof to the House of Commons it self.

This Privilege of Freedom from Arrests is the only Privilege which Sir Edward Coke finds to belong to the House of Commons; he cannot, or at least he doth not, so much as name any other in his Section of the *Privileges of Parliament*: neither doth he bring so much as one Precedent for the Proof of this one Privilege for the House of Commons; which may cause a Doubt that this sole Privilege is not so clear as many do imagine. For in a Parliament in the 27 Eliz. Richard Coke, a Member, being served with a *Subpœna of Chancery*, the Lord Chancellor thought the House had no such Privilege for *Subpœna's* as they pretended; neither would he allow of any Precedents of the House committed unto them, formerly used in that Behalf, unless the House of Commons could also prove the same to have been likewise thereupon allowed, and ratified also by Precedents in the Court of Chancery.

In the 39 of Eliz. Sir Edw. Hobby, and Mr. Brograve, Attorney of the Dutchy, were sent by the House to the Lord Keeper, in the name of the whole House, to require his Lordship to

revoke two Writs of *Subpœna's*, which were served upon M. Th. Knevit, a Member of the House, since the Beginning of Parliament. The Lord Keeper demanded of them, whether they were appointed by any advised Consideration of the House, to deliver this Message unto him with the word *Required*, in such manner as they had done, or no: they answered his Lordship, yea: his Lordship then said, as he thought reverently and honourably of the House, and of their Liberties, and Privileges of the same, so to *revoke the said Subpœna's in that sort, was to restrain Her Majesty in Her greatest Power, which is, Justice in the Place wherein he serveth under Her*, and therefore he concluded, as they had *required* him to revoke his Writ, so he did *require to deliberate*.

Upon the 22 of *February*, being Wednesday, 18. *Eliz.* Report was made by Mr. Attorney of the Dutchy, upon the Committee, for the delivering of one Mr. *Hall's* man; that the Committee found *no Precedent for setting at large by the Mace any Person in Arrest but only by Writ*, and that by divers Precedents of Records perused by the said Committee, it appeareth that every Knight, Citizen or Burgeſs which doth require Privilege, hath used in that case to take a Corporal Oath before the Lord Chancellor,

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lor, or Lord Keeper, that *the party* for whom such Writ is prayed, *Came up with him, and was his Servant at the time of the Arrest made.* Thereupon M. Hall was moved by the House to repair to the Lord Keeper, and make Oath, and then take a Warrant for a Writ of Privilege for his Servant.

It is accounted by some to be a Privilege of Parliament to have power to Examine *Misdemeanours* of Courts of Justice, and Officers of State : yet there is not the meanest Subject but hath liberty, upon just cause, to question the misdemeanour of any Court or Officer, if he suffer by them ; there is no Law against him for so doing ; so that this cannot properly be called a Privilege, because it is not against any publick Law : It hath been esteemed a great Favour of *Princes* to permit such Examinations : For, when the Lords were displeased with the Greatness of *Pierce Gaveston*, it is said, that in the next Parliament, *the whole Assembly obtain of the King to draw Articles of their Grievances*, which they did. Two of which Articles were, First, that *all Strangers should be banished the Court and Kingdom* : of which *Gaveston* was one. Secondly, that *the business of the State should be treated of by the Council of the Clergy and Nobles.*

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In the Reign of King *Henry* the sixth, one *Mortimer*, an Instrument of the Duke of *York*, by promising the *Kentish* men a *Reformation*, and freedom from *Taxations*, wrought with the people, that they drew to a Head, and made this *Mortimer* (otherwise *Jack Cade*) their Leader: who styled himself Captain *Mend-all*: He presents to the Parliament the Complaints of the Commons, and he petitions that the Duke of *York* and some other Lords might be received by the King into favour, by the undue Practices of *Suffolk* and his Complices, commanded from his Presence; and that all their Opposites might be banished the Court, and put from their Offices, and that there might be a general amotion of corrupt Officers: These Petitions are sent from the *Lower House* to the *Upper*, and from thence committed to the Lords of the Kings *Privy Council*, who, having examined the particulars, explode them as frivolous, and the Authors of them to be presumptuous Rebels.

Concerning *Liberty*, or freedom of Speech, I find, that at a Parliament at *Black Friars* in the 14 of *Henry* the Eighth, Sir *Tho. More* being chosen Speaker of the House of Commons: He first disabled himself, and then petitioned the King, that if in Communication
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and Reasoning, any man in the Commons House should speak more largely than of duty they ought to do, that all such Offences should be pardoned, and to be entred of Record; which was granted. It is observable in this Petition, that liberty or freedom of Speech is not a power for men to speak what they will, or please, in Parliament; but a Privilege not to be punished, but pardoned for the offence of speaking *more largely than in duty ought to be*; which in an equitable construction must be understood of rash, unadvised, ignorant, or negligent Escapes, and Slips in Speech: and not for wilful, malicious Offences in that kind; And then the Pardon of the King was desired to be upon Record, that it might be pleaded in Bar to all Actions. And it seemeth that *Ric. Strood* and his Complices, were not thought sufficiently protected for their free Speech in Parliament, unless their Pardon were confirmed by the King in Parliament, for there is a printed *Statute* to that purpose in *H. 8th* time.

Touching the freedom of Speech, the Commons were warned in *Q. Eliz.* dayes not to meddle with the *Queens Person, the State, or Church-government*. In her time the Discipline of the Church was so strict, that the *Litany* was read every morning in the House of Commons, during the Parliament, and when the
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Commons first ordered to have a *Fast in the Temple upon a Sunday*, the Queen hindred it.

21 Jan. Saturday, 23 Eliz. the Case is thus reported: Mr. *Paul Wentworth* moveth for a Publick set Fast, and for a Preaching every morning at 7 of the clock, before the House fate: the House was divided about the Fast, 115 were for it, and an 100 against it; it was ordered, that *as many of the House as conveniently could, should on Sunday fortnight after, Assemble, and meet together in the Temple-Church, there to hear Preaching, and to joyn together in Prayer, with Humiliation and Fasting, for the Assistance of God's Spirit in all their Consultations, during this Parliament, and for the Preservation of the Queens Majesty and Her Realms: And the Preachers to be appointed by the Privy Councel that were of the House, that they may be Discreet, not meddling with Innovation or Unquietness.* This Order was followed by a Message from Her Majesty to the House, declared by Mr. Vice-chamberlain, that Her Highness had a great Admiration of the rashness of this House, in committing such an apparent Contempt of her express Command, as to put in execution such an Innovation, without Her privacy, or pleasure first known. Thereupon Mr. Vice-chamberlain moved the House to make humble submission to Her Majesty, acknowledging the said Offence, and Contempt, craving a Remission of the same, with a full pur-

purpose to forbear the Committing of the like hereafter: and by the Consent of the whole House, Mr. Vice-chamberlain carried their Submission to her Majesty.

35 *Eliz.* Mr. *Peter Wentworth*, and Sir *Henry Bromley*, delivered a Petition to the Lord Keeper, desiring the Lords of the upper House to be Suppliants with them of the lower House, unto her Majesty for *entailing the Succession of the Crown*. Whereof a Bill was ready drawn by them. Her Majesty was highly displeased herewith, as contrary to her former strait Command, and charged the Council to call the Parties before them: Sir *Thomas Henage* sent for them, and after Speech with them, commanded them to forbear the Parliament, and not to go out of their several Lodgings; after, they were called before the Lord Treasurer, the Lord *Buckhurst*, and Sir *Thomas Henage*; Mr. *Wentworth* was committed by them to the Tower, Sir *Henry Bromley*, with Mr. *Richard Stevens*, to whom Sir *Henry Bromley* had imparted the Matter, were sent to the Fleet, as also Mr. *Welch* the other Knight for *Worcestershire*.

In the same Parliament Mr. *Morrice*, Attorney of the Court of Wards, moved against the hard Courses of the Bishops, Ordinaries, and other Ecclesiastical Judges in
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their Courts, used towards sundry Learned, and godly Ministers and Preachers; and spake against Subscription, and Oaths; and offer'd a Bill to be read against Imprisonment for refusal of Oaths: Mr. Dalton opposed the Reading of it, as a thing expressly against Her Majesties Command, to meddle in: Doctor *Lewin* shewed, that Subscription was used even at *Geneva*: At two of the clock the same day, the Speaker, Mr. *Coke*, (afterwards Sir *Edward Coke*) was sent for to the Court, where the Queen Her self gave him in Command a Message to the House: She told him, *It being wholly in Her Power to Call, to Determine, to Assent, or Dissent to any thing done in Parliament: that the Calling of This was only, that the Majesty of God might be more religiously observed, by compelling, by some sharp Laws, such as neglect that Service: and that the Safety of Her Majesties Person, and the Realm might be provided for: It was not meant they should meddle with matters of State, or Causes Ecclesiastical, (for so Her Majesty termed them) she wondred that any could be of so high Commandement, to attempt (they were Her own words) a thing so expressly contrary to that which She had commanded: wherefore with this She was highly offended: And because the words spoken by my Lord Keeper, are*
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not now perhaps well remembred, or some be now here that were not then present. Her Majesties present Charge and expresse Command is, that no Bill touching the said matter of State or Reformation in Causes Ecclesiastical, be exhibited; and upon my Allegiance (saith Mr. Coke) I am charged, if any such Bill be exhibited, not to read it. I have been credibly informed, that the Queen sent a Messenger, or Serjeant at Arms, into the House of Commons, and took out Mr. Morrice, and committed him to prison: within few dayes after, I find Mr. Wroth moved in the House, that they might be humble Suitors to Her Majesty, that She would be pleased to set at liberty those Members of the House that were restrained. To this it was answered by the Privy Counsellors, that Her Majesty had committed them for Causes best known to Her self, and to press Her Highness with this Suit, would but hinder them whose Good is sought: that the House must not call the Queen to account for what she doth of Her Royal Authority: that the Causes for which they are restrained may be High and Dangerous: that Her Majesty liketh no such Questions; neither doth it become the House to search into such matters.

In the 39 Eliz. The Commons were told their Privilege was Yea, and No: and that Her

Her Majesties Pleasure was, that if the Speaker perceived any idle heads which would not stick to hazard their own Estates; which will meddle with reforming the Church, and transforming the Commonweal, and do exhibit Bills to that purpose; the Speaker should not receive them till they were viewed and considered by those, whom it is fitter should consider of such things, and can better judge of them: and at the end of this Parliament, the Queen refused to pass 48 Bills which had passed both Houses.

In the 28 of *Eliz.* the Queen said, *She was sorry the Commons medled with chusing and returning Knights of the Shire for Norfolk, a thing impertinent for the House to deal withal, and only belonging to the Office and Charge of the Lord Chancellor, from whom the Writs issue, and are returned.*

4 *Hen. 4.* The 10 of October, the Chancellor before the King declared, the Commons had sent to the King, praying him that they might have Advice, and Communication with certain Lords about Matters of Business in Parliament, for the common good of the Realm: which Prayer Our Lord the King graciously granted, making Protestation, he would not do it of Duty, nor of Custom, but of his special Grace at this time: and therefore Our Lord the King charged the Clark of the Parliament, that this

Protestation should be entred on Record upon the Parliament-Roll: which the King made known to them by the Lord Say, and his Secretary; how that neither of Due nor of Custom, our Lord the King ought to grant any Lords to enter into Communication with them, of Matters touching the Parliament, but by his special Grace at this time he hath granted their Request in this Particular: upon which matter, the said Steward and Secretary made Report to the King in Parliament; that the said Commons knew well that they could not have any such Lords to commune with them, of any Business of Parliament, without special Grace and Command of the King Himself.

It hath heretofore been a question, whether it be not an Infringing, and Prejudice to the Liberties and Privileges of the House of Commons, for them to joyn in Conference with the Lords in Cases of Benevolence, or Contribution, without a Bill.

In the 35 *Eliz.* on Tuesday the first of March, Mr. Egerton, Attorney general, and Doct. Carey came with a Message from the Lords; their Lordships desired to put the House in Remembrance of the Speech delivered by the Lord Keeper, the first day for Consultation and Provision of Treasure, to be had against the great and imminent Dangers

gers of the Realm; thereupon their Lordships did look to have something from the Houses, touching those Causes before this time (and yet the Parliament had sate but three dayes, for it began Feb. 26.) and therefore their Lordships had hitherto omitted to do any thing therein themselves. And thereupon their Lordships desired, that according to former laudable Usages between both Houses in such like Cases, a Committee of Commons may have Conference with a Committee of Lords, touching Provision of Treasure against the great Dangers of the Realm, which was presently resolved by the whole House, and they signified to their Lordships the willing, and ready Assent of the whole House. At the Meeting, the Lords negatively affirm, not to assent to less than three Subsidies, and do insist for a second Conference. *M. Francis Bacon* yielded to the Subsidy, but opposed the joyning with the Lords, as contrary to the Privileges of the House of Commons; thereupon the House resolved to have no Conference with the Lords, but to give their Lordships most humble and dutiful Thanks with all Reverence for their favourable and courteous Offer of Conference, and to signifie that the Commons cannot in those Cases of Benevolence, or Contribution joyn

in conference with their Lordships, without prejudice to the Liberties and Privileges of the House : and to request their Lordships to hold the Members of this House excused in their not-assenting to their Lordships said Motion for Conference, for that so to have Assented without a Bill, had been contrary to the Liberties and Privileges of this House, and also contrary to the former Precedents of the same House in like cases had. This Answer delivered to the Lords by the Chancellor of the Exchequer, their Lordships said, they well hoped to have had a Conference according to their former Request, and desir'd to see those Precedents by which the Commons seem to refuse the said Conference. But in conclusion it was agreed unto, upon the Motion of Sir *Walter Raleigh*, who moved, that without naming a Subsidy, it might be propounded in general words, to have a Conference touching the Dangers of the Realm, and the necessary Supply of Treasure to be provided speedily for the same, according to the Proportion of the Necessity.

In the 43 *Eliz.* Serjeant *Heal* said in Parliament, *he marvel'd the House stood either at the granting of a Subsidy or time of Payment, when all we have is her Majesties, and She may lawfully at her Pleasure take it from us ; and that she had as much right to all our Lands and Goods, as to any Revenue of the Crown ; and he said he could prove*

it by *Precedents in the time of H. 3. K. John and K. Stephen*. The ground upon which this Serjeant at Law went, may be thought the same Sir Edw. Coke delivers in his *Institutes*, where he saith, *the first Kings of this Realm had all the Lands of England in Demesne, and the great Manors & Royalists they reserved to themselves, & of the remnant for the defence of the Kingdom enfeoffed the Barons*: from whence it appears, that no man holds any *Lands* but under a condition to defend the Realm; and upon the self-same Ground also the Kings Prerogative is raised, as being a Preheminence, in cases of Necessity, above, & before the Law of Property, or Inheritance. Certain it is, before the Commons were ever chosen to come to Parliament, Taxes or Subsidies were raised and paid without their gift. The great and long continued Subsidy of *Dane-gelt* was without any Gift of the Commons, or of any Parliament at all, that can be proved. In the 8 *H. 3.* a Subsidy of 2 Marks in Silver upon every Knights fee was granted to the *King* by the *Nobles*, without any Commons. At the passing of a Bill of Subsidies the words of the King are, *the King thanks his loyal Subjects, accepts their good Will, & also will have it so: le Roy remercie ses loyaux Subjects, accept leur benevolence, & aussi ainsi le veult*: which last words of *ainsi le veult*, *the King wills it to be so*, are the only words that makes the Act of Subsidy a Law to bind every man to the Payment of it.

In the 39 Eliz. The Commons, by their Speaker, complaining of *Monopolies*, the Queen spake in private to the L. Keeper, who then made answer touching *Monopolies*, that *Her Majesty hoped her dutiful and loving Subjects would not take away Her Prerogative, which is the chiefest Flower in her Garland, and the principal and head Pearl in Her Crown and Diadem, but that they will rather leave that to Her Disposition.*

The second Point is, that the Free-holders, or Counties do not, nor cannot give Privilege to the Commons in Parliament. They that are under the Law cannot protect against it, they have no such Privilege themselves as to be free from Arrests, and Actions: for if they had, then it had been no Privilege, but it would be the Common Law: And what they have not, they cannot give; *Nemo dat quod non habet*, neither do the Free-holders pretend to give any such Privilege, either at their Election, or by any subsequent Act; there is no mention of any such thing in the return of the Writ; nor in the Indentures between the Sheriff, and the Free-holders.

The third Point remains, That Privilege of Parliament is granted by the King. It is a known Rule, *that which gives the Form, gives the Consequences of the Form*; the King by

by his Writ gives the very Essence, and Form to the Parliament: therefore Privileges which are but Consequences of the Form, must necessarily flow from Kings.

All other Privileges and Protections are the Acts of the King; and by the Kings Writ. Sir *Edw. Coke* saith, that the *Protection of mens Persons, Servants, and Goods, is done by a Writ of Grace from the King.* At the presentment of the Speaker of the House of Commons to the King upon the first day of Parliament, The Speaker in the Name and Behoof of the Commons, humbly craveth that his Majesty would be graciously pleased to grant them their accustomed Liberties and Privileges; which Petition of theirs, is a fair Recognition of the Primitive Grace and Favour of Kings in bestowing of Privilege, and it is a shrewd Argument against any other Title: For our Ancestors were not so ceremonious nor so full of Complement as to beg that by *Grace*, which they might claim by *Right*. And the Renewing of this Petition every Parliament argues the Grant to be but temporary, during only the present Parliament; and that they have been accustomed, when they have been accustomably sued, or petitioned for. I will close this Point with the Judgment of King *James*, who in his Decla-

ration touching his Proceedings in Parliament 1621. resolves, that most Privileges of Parliament grew from *Precedents* which rather shew a Toleration than an Inheritance; therefore he could not allow of the Style, calling it their ancient and undoubted Right and Inheritance, but could rather have wished that they had said, their Privileges were derived from the Grace and Permission of his Ancestors and Him: and thereupon he concludes, He cannot with Patience endure his Subjects to use such Antimonarchicall words concerning their Liberties, except they had subjoyned, that they were granted unto them by the Grace and Favours of his Predecessors: yet he promiseth to be careful of whatsoever Privileges they enjoy by long Custom and uncontrolled and lawful *Precedents*.

Obfer-

OBSERVATIONS

UPON

Aristotle's Politiques,

TOUCHING

Forms of Government.

Together with

DIRECTIONS

FOR

Obedience to Governours

in Dangerous and Doubtful Times.

OBSERVATIONS

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THE PREFACE.

IN every Alteration of Government there is something new, which none can either Divine, or Judge of, till time hath tried it : we read of many several wayes of Government ; but they have all, or most of them, been of particular Cities, with none, or very small Territories at first belonging to them. At this present the Government of the Low-Countries, and of Swisserland, are not appropriated either of them to any one City, for they are compounded of several petty Principalities, which have special and different Laws and Privileges each of them ; insomuch that the United Provinces, and united Cantons are but Confederacies and Leaguers, and not two entire Commonweals ; Associates onely for mutual Defence. Nay, the Cantons of Swisserland are not only several Republicks, but reputed to have different Forms of Commonweals ; some being said to be Aristocratically governed, and others

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others Democratically, as the Mountaineers: and some of the Cantons are Papists, and some Protestants, and some mixt of both: we do not find that any large or great Dominion or Kingdom united in one Government, and under the same Laws, was ever reduced at once to any kind of Popular Government, and not confined to the subjection of one City: This being a thing not yet done, requires the abler men to settle such a Peaceable Government as is to be desired: there being no Precedent in the case; all that can be done in it, is, at first to enquire into such other Governments, as have been existent in the World. As a Preface to such an Enquiry, the Sacred Scripture (if it be but for the Antiquity of it) would be consulted; and then Aristotle, the grand Master of Politiques; and after him the Greek and Latin Historians that lived in Popular times, would be diligently examined. To excite others of greater Abilities to an exacter Disquisition, I presume to offer a Taste of some Doctrines of Aristotle, which are usher'd in with a briefer Touch of the Holy Scriptures.

It is not probable, that any sure direction of the beginning of Government, can be found either in Plato, Aristotle, Cicero, Polybius, or in any other of the Heathen Authors, who were ignorant of the manner of the Creation of the World: we must not neglect the Scriptures, and
search

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search in Philosophers for the grounds of Dominion and Property, which are the main Principles of Government and Justice. The first Government in the World was Monarchical, in the Father of all Flesh. Adam being commanded to multiply, and People the Earth, and to subdue it, and having Dominion given him over all Creatures, was thereby the Monarch of the whole World; none of his Posterity had any Right to possess any thing, but by his Grant or Permission, or by Succession from him: the Earth (saith the Psalmist) hath he given to the Children of men: which shews, the Title comes from Fatherhood. There never was any such thing as an Independent Multitude, who at first had a natural Right to a Community: this is but a Fiction, or Fancy of too many in these dayes, who please themselves in running after the Opinions of Philosophers and Poets, to find out such an Original of Government, as might promise them some title to Liberty, to the great Scandal of Christianity, and bringing in of Atheism, since a natural freedom of mankind cannot be supposed without the denial of the Creation of Adam. And yet this conceit of Original Freedom is the only Ground upon which not only the Heathen Philosophers, but also the Authors of the Principles of the Civil Law; and Grotius, Selden, Hobbs, Ashcam, and others raise, and build their Doctrines

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Crimes of Government, and of the several sorts or kinds, as they call them, of Commonwealths.

Adam was the Father, King, and Lord over his Family: a Son, a Subject, and a Servant or a Slave, were one and the same thing at first; the Father had power to dispose, or sell his Children or Servants, whence we find, that at the first reckoning up of Goods in Scripture, the Man-servant, and the Maid-servant are numbred among the Possessions and Substance of the Owner, as other Goods were. As for the names of Subject, Slave, and Tyrant, they are not found in Scripture, but what we now call a Subject or a Slave, is there named no other than a Servant: I cannot learn that either the Hebrew, Greek or Latin have any proper and Original Word for a Tyrant or a Slave, it seems these are names of later invention, and taken up in disgrace of Monarchical Government.

I cannot find any one place, or Text in the Bible, where any Power or Commission is given to a People either to govern themselves, or to choose themselves Governours, or to alter the manner of Government at their pleasures, the Power of Government is settled and fixed by the Commandement of Honour thy Father; if there were a higher Power than the Fatherly, then this Commandement could not stand,

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stand, and be observed : Whereas we read in Scripture, of some Actions of the People in setting up of Kings, further than to a naked Declaration by a part of the People of their Obedience, such Actions could not amount, since we find no Commission they have, to bestow any Right; a true representation of the People to be made, is as impossible, as for the whole People to Govern; the names of an Aristocracy, a Democracy, a Commonweal, a State, or any other of like signification, are not to be met either in the Law or Gospel.

That there is a ground in Nature for Monarchy, Aristotle himself affirmeth, saying, the first Kings were Fathers of Families; as for any ground of any other Form of Government, there hath been none yet alleged, but a supposed natural Freedom of Mankind; the Proof whereof I find none do undertake, but only beg it to be granted : We find the Government of Gods own People varied under the several Titles of Patriarchs, Captains, Judges, and Kings; but in all these the Supreme Power rested still in one Person onely : We no where find any Supreme Power given to the People, or to a Multitude in Scripture, or ever exercised by them. The People were never the Lords anointed, nor called Gods, nor Crowned, nor had the Title of Nursing-Fathers, Gen. 35. 11. The Supreme Power being an indivisible Beam
of

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of Majesty, cannot be divided among, or settled upon a Multitude. God would have it fixed in one Person, not sometimes in one part of the People, and sometimes in another; and sometimes, and that for the most part, no where, as when the Assembly is dissolved, it must rest in the Air, or in the walls of the Chamber where they were Assembled.

If there were any thing like a Popular Government among Gods People, it was about the time of the Judges, when there was no King in Israel; for they had then some small Show of Government, such as it was, but it was so poor and beggarly, that the Scripture brands it with this note, that every man did what was right in his own eyes, because there was no King in Israel; it is not said, because there was no Government, but because there was no King; it seems no Government, but the Government of a King, in the judgment of the Scriptures could restrain men from doing what they listed; where every man doth what he pleaseth, it may be truly said, there is no Government; for the end of Government is, that every man should not do what he pleased, or be his own Judge in his own case; for the Scripture to say there was no King, is to say there was no Form of Government in Israel.

And what the Old Testament teacheth us, we have confirmed in the New: If Saint Paul
had

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had onely said, Let every Soul be subject to the higher Powers, and said no more: then men might have disputed, whether Saint Paul, by higher Powers, had not meant as well other Governours as Kings; or other Forms of Government, as Monarchy; but the good luck is, Saint Paul hath been his own Interpreter or Comment: for, after the general Doctrine of Obedience to be given by all men to the higher Powers, he proceeds next to charge it home, and lay it to the Conscience under pain of Damnation, and applies it to each particular mans Conscience; saying, Wilt thou not be afraid of the Power? which Power he expounds in the singular number, restraining it to one Person, saying, He is the Minister of God to thee; it is not, They are the Ministers to thee; and then again, He beareth not the Sword in vain; and then a third time in the same verse, lest thou should'st forget it, he saith, for He is the Minister of God, a Revenger to Wrath &c. upon thee: if Saint Paul had said, They are the Ministers of God, or They bear not the Sword in vain, it might be doubted, whether [they] were meant of Kings onely, or of other Governours also; but this Scruple is taken away by the Apostle himself. And as St. Paul hath expounded what he means by Higher Powers, so St. Peter also doth the like: for the self-same Word that St. Paul useth

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for Higher, in Saint Peter is translated Supreme; so that though in our English Bibles the words differ, yet in the Original they are both the same; so that St. Paul might have been Englished, Let every Soul be subject to the Supreme Power; or St. Peter might have been translated, whether to the King as to the higher; yet there is this difference, that whereas St. Paul useth the word in the Plural number, St. Peter hath it in the Singular, and with application to the King.

*It will be said, Though St. Peter make the King Supreme, yet he tells us the King is a humane Ordinance, or a Creature of the People's. But it is answered, Kings may be called an humane Ordinance, for being made of one of the People, and not by the People; and so are humane in Regard of their material Cause, not of their efficient. If St. Peter had meant that Kings had been made by the People, he must also have meant that Governours had been made by the People, for he calls the Governours as well an Ordinance of Man, as the King; for his words are, Submit your selves to every Ordinance of man for the Lord's sake, whether it be to the King as Supreme, or whether it be to Governours: but Saint Peter sheweth, that Governours are not made by the People; for he saith, they that are sent by Him (not by them) for the punishment
of*

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of Evil doers : so that the Governours are sent by the King, and not by the People : some would have sent by him, to be sent by God; but the Relative must be referr'd to the next Antecedent, which is the King, and not God. Besides, if Governours be sent by God, and Kings by the People, then Governours would be Supreme, which is contrary to Saint Peter's Doctrine; and it will follow, that the People have not the power of choosing Representatives to Govern, if Governours must be sent of God.

The safest sense of Saint Peter's words is, Submit your selves to all Humane Laws, whether made by the King, or by his Subordinate Governours. So the King may be called a Humane Ordinance, as being all one with a Speaking Law : the word in the Original is, Be subject to every humane Creation; it is more proper to call a Law made by a King a creation of an Ordinance, than the Peoples choosing or declaring of a King, a Creation of him.

But take the words in what sense soever you will, it is most evident, that Saint Peter in this place, takes no notice of any Government or Governours, but of a King, and Governours sent by him, but not by the People. And it is to be noted, That St. Peter and St. Paul, the two chief of the Apostles, wrote their Epi-

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stles at such a time, when the name of a Popular Government, or of the People of Rome was at least so much in Shew and in Name, that many do believe, That notwithstanding the Emperours by strong hand usurped a Military Power; yet the Government was for a long time in most things then in the Senate and People of Rome; but for all this, neither of the two Apostles take any notice of any such Popular Government; No, nor our Saviour himself, who divides all between God and Caesar, and allows nothing that we can find for the People.

OBSERVA.



O B S E R V A T I O N S

U P O N

Aristotles Politiques,

T O U C H I N G

Forms of Government.

WHAT cannot be found in *Scripture*, many do look for in *Aristotle*; for if there be any other Form of Government besides Monarchy, he is the man best able to tell what it is, and to let us know by what name to call it, since the Greek Tongue is most happy in compounding Names, most significant to express the nature of most things: The usual terms in this Age of *Aristocracy* and *Democracy* are taken up from him to express Forms of Government most different from *Monarchy*: We must therefore make inquiry into *Aristotle* touching these two Terms.

True it is, *Aristotle* seems to make three sorts of Government, which he distinguisheth by * the Sovereignty of one man, or of a few, or of many, for the common Good.

* Ἀνάγκη δ' εἶναι κύριον ἢ ἓνα, ἢ ὀλίγους, ἢ τοὺς πολλοὺς πρὸς τὸ κοινὸν συμφέρον. l.3.c.7.

Ταύται μὲν ὁρθαὶ
 εἰς πολιτείας τὰς
 πρὸς τὸ ἴδιον, ἢ τῷ ἐνὸς,
 ἢ τῷ ὀλίγων, ἢ τῷ πλῆ-
 θους παρεχόμεναι. Τῶν μὲν
 ἀρχῶν ἢ πρὸς τὸ κοινόν
 ἀπὸ βλάβους συν-
 φέρον, βασιλείαν. &c.

These (he saith) are right
 or perfect Governments, but
 those that are for the private
 Good of one, or of a few, or
 of a Multitude, are Trans-
 gressions. The Government
 of a Monarchy for the Com-
 mon Good, he calls a King-
 dom. The Government
 of a few more than one, an Aristocratie; either because
 the best men govern, or because it is for the best of the
 governed: when a Multitude governs for the common
 Good, it is called by the common name of all Govern-
 ments, a POLITIE. It is possible that one or a
 few may excell in Vertue, but it is difficult for many to
 excell in all Vertue, except in Warlike Affairs, for this
 is natural in a Multitude; therefore, in this sort of Go-
 vernment their principal Use is to war one for another,
 and to possess the Arms or Ammunition. The Transgres-
 sions of Government before spoken of, are these: Ty-
 ranny is the Transgression of the Kingdom; and De-
 mocratic is the Transgression of the Politie. For Tyranny
 is a Monarchy for the Benefit of the Monarch; the Oligar-
 chy, for the Profit of the Rich; the Democratic for the Be-
 nefit of the Poor. None of these are for the Common
 Good.

Here Aristotle, if he had stood to his own Princi-
 ples, should have said an Oligarchy should be for the
 Benefit of a few, and those the best; and not for the Benefit
 of the rich: and a Democratic for the Benefit of many,
 and not of the Poor only; for so the Opposition ly-
 eth; but then Aristotle saw his Democratic would
 prove to be no Transgression, but a perfect Politie, and
 his

his *Oligarchy* would not be for the Benefit of a few, and those the best men; for they cannot be the best men, that seek onely their private Profit. In this Chapter, the mind of *Aristotle* about the several kinds of Government, is clearliest delivered, as being the foundation of all his Books of Politiques, it is the more necessary to make a curious Observation of these his Doctrines. In the first place, he acknowledgeth the Government of *one man*, or of a *Monarchy*, and that is a perfect Form of Government.

Concerning Monarchy, *Aristotle* teacheth us the beginning of it; for, saith he, the *first Society made of many Houses is a Colony, which seems most naturally to be a Colony of Families, or Foster-brethren of Children and Childrens children. And therefore at the beginning Cities were, and now Nations, under the Government of Kings; the Eldest in every house is King, and so for Kindred sake it is in Colonies.

*Μάλιστα δὲ καὶ φύσιν
 οἰκεῖν ἢ κώμη ἀποικία
 οἰκείας ἑῷ, καὶ χαλσὶ πι-
 νες, ὁμογενεῖς καὶ παῖδας
 καὶ παίδων παῖδας. Διὸ
 καὶ τὸ πρῶτον ἐβασίλευ-
 οντο αἱ πόλεις, καὶ νῦν ἔτι
 ταῖς ἔθνεσιν. l. 1. c. 2. πα-
 σα γὰρ οἰκεία βασιλεύει-
 ται ὑπὸ τοῦ προσβυό-
 τυ, ὥστε καὶ αἱ ἀποικίαι
 ἀπὸ τούτου συγγενεῖαι.

Thus he deduced the Original of Government from the Power of the Fatherhood, not from the Election of the People. This it seems he learnt of his Master *Plato*, who in his third Book of Laws affirms, that the true and first Reason of Authority is, that the Father and Mother, and simply those that beget and ingender, do command and rule over all their Children. *Aristotle* also tells us from *Homer*,

(a) Θεμιστοκλεις ἔκασ-
τος παίδων ἡδ' αἰ-
δούχων.

(a) that every man gives Laws
to his Wife and Children.

(b) Ἀνάγκη γὰρ ἔ-
στιν πρῶτης καὶ θεο-
στασίας παραβάσις
(b) χειρίστην.

In the fourth Book of his
Politiques, cap. 2. he gives to
Monarchy the Title of the (b)
first and divinest sort of Go-
vernment, defining Tyranny to
be a Transgression from the first,
and divinest.

(c) Τῶν βελτί-
στην ἡ βασιλεία, χει-
ρίστη γὰρ τιμωρία.

Again, Aristotle in the eighth
Book of his Ethics, in the 12
Chapter, saith, That of (c) the
right Kinds of Government, a
Monarchy was the best, and a
popular Estate the worst.

(d) Περί τῆς συμ-
βουλίας καλυμμέ-
νης, αὐτὴ δ' ὅτι καὶ
ἡν ἀρχαί πάντων
καὶ τῶν αὐτῶν βέλη-
σιν ὁ βασιλεὺς ὁ μὲν
γὰρ καὶ νόμον λεγόμε-
νον βασιλεὺς, ἐκ τῶν εἰδῶν, καὶ δὲ πρὸς εἰπομέν
πολιτείας.

Lastly, in the third Book
of his Politiques, and the six-
teenth Chapter concerning
Monarchy, he saith, that (d)
A perfect Kingdom is that
wherein the King rules all things
according to his own Will; for
he that is called a King accord-
ing to the Law makes no kind of
Government.

Secondly, he saith there is a Government of a few
men, but doth not tell us how many those few men
may, or must be, only he saith they must be more than
one man, but how many, that he leaves uncertain.

This perfect Government of a few, any man
would think Aristotle should have called an Oligarchy,

for

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for that this word properly signifies so much; but in stead of the Government of a few, *Aristotle* gives it a quite other name, and terms it an *Aristocracy*, which signifies the Power of the best; the reason why it is called an *Aristocracy*, saith *Aristotle*, is for that there the best men govern, or (because that is not always true) for that it is for the best of the governed; by this latter reason any Government, and most especially a *Monarchy*, may be called an *Aristocracy*, because the End of *Monarchy* is for the best of the governed, as well as the End of an *Aristocracy*; so that of these two Reasons for calling the Government of a few an *Aristocratie*, the first is seldome true; and the latter is never sufficient to frame a distinction. This *Aristotle* himself confesseth in his next Chapter, saying (a) that the Causes aforesaid do not make a Difference, and that it is Poverty and Riches, and not Few, and Many, that makes the Difference between an *Oligarchy*, and *Democracy*; there must be an *Oligarchy* where rich men rule, whether they be few or many: and wheresoever the Poor have the Sovereignty, there must be a *Democracy*.

(a) Διὸ καὶ ἡ συν-
ταίνει τοὺς ῥηθείας
αἰτίας χρεὼς διαφο-
ρὰς, ὥς ἡ διαφορὰ
ἢ δημοκρατία καὶ ἡ
ὀλιγαρχία ἀλλήλων
πενία καὶ πλεονεία ἐστὶ,
&c. lib. 3. c. 8.

Now if *Aristotle* will allow Riches and Poverty to make a Difference between an *Oligarchy* and a *Democraty*: these two must likewise make the Difference between an *Aristocracy* and a *Polity*: for the only Difference *Aristotle* makes between them is, in their Ends, and not in their Matter; for the same few men may make an *Aristocracy*, if their End be the Common Good; and they may be an *Oligar-
chy*

chy, if they aim only at their private Benefit.

Thus is *Aristotle* distracted and perplexed how to distinguish his *Aristocratie*, whether by the smallness of their Number, or by the Greatness of their Estates.

Lib. 1. c. 8. Nay if we look into *Aristotles Rhetoriques*,

we shall find a new Conceit, not only about *Aristocratie*, but also about the sorts of Government: for whereas he has taught us in his *Politiques*, that there be three sorts of right or perfect Government, and as many sorts of wrong, which he calls Transgressions or Corruptions, he comes in his *Rhetoriques*, and teacheth us that there be four sorts of Government.

(a) ἔστι δὲ δημοκρατία πολιτεία ἐν ᾗ κλήρῳ διανέμονται πᾶς ἀρχάς· ὀλιγαρχία δὲ ἐν ᾗ οἱ ἀπὸ τιμῆς ἀριστοκρατία δὲ ἐν ᾗ οἱ ἀπὸ παιδείας.

(b) Μοναρχία δὲ ἔστι τὸ νομοθετεῖν ἐν ᾗ εἷς ἀπάντων κύριός ἐστι.

1 (a) A Democratic, where Magistracies are distributed by Lots.

2. In an Oligarchy by their Wealth.

3. In an Aristocracy by their Instructions in the Law. It is necessary for these to appear the best from whence they have their name.

4. (b) A Monarchy according to the name, wherein one is Lord over all.

Here we see *Aristocratie* is not distinguished by smallness of Number, nor by Riches, but by Skill in the Laws; for he saith those that are instructed in the Laws govern in an *Aristocratie*: οἱ γὰρ ἐμμεμενέστεροι ἐν τοῖς νομίμοις ἐν τῇ Ἀριστοκρασίᾳ ἀρχοῦσιν. a Point not dreamt of in his *Politiques*; by which it seems *Aristotle* himself did not know well what he would have

to be an *Aristocratie*. And as he cannot teach us truly what an *Aristocratie* is, so he is to seek to tell us where any *Aristocratie* ever was; even himself seems to doubt, whether there be any such Form of Government, where he saith in his third Book of Politics, cap. 5.

(a) It is impossible for any Mechanical man to be a Citizen in an *Aristocratie*, if there be any such Government as they call *Aristocratical*.

(a) Εἰ τις ἐστὶν ἢ μηχανικὸν ἀριστοκρατικῶν.

His [if] makes him seem to doubt of it; yet I find him affirm that the Commonwealth of *Carthage* was *Aristocratical*; he doth not say it was an *Aristocratie*, for he confesseth it had many of the Transgressions which other Commonwealths had, and did incline either to a *Democratie* or an *Oligarchy*.

(b) The Government of *Carthage* did transgress from an *Aristocratie* to an *Oligarchy*.

(b) Παρεμβαίνει ὅτις ἀριστοκρατίας ἢ πλείους τῶν

Καρχηδονίων μάλιστα πρὸς ὀλιγαρχίαν. L. 2. c. 11.

And he concludes, that if by Misfortune there should happen any Discord among the *Carthaginians* themselves, there would be no Medicine by Law found out to give it Rest; wherein me-thinks *Aristotle* was a kind of Prophet, for the Discords between the Citizens of *Carthage*, were the main Cause that *Hannibal* lost not only *Italy*, but *Carthage* it self.

By these few Collections we may find how uncertain *Aristotle* is in determining what an *Aristocratie* is, or where or when any such Government was; it may justly be doubted whether there

there ever was, or can be any such Government.

Let us pass from his *Aristocracy*, to his third sort of perfect or right Government; for which he finds no particular Name, but only the common Name of all Government, *Politia*: It seems the *Greeks* were wonderfully to seek, that they of all men should not be able to compound a name for such a perfect Form of Government, unless we should believe that they esteemed this kind of Commonwealth so superlatively excellent, as to be called, καὶ ἐξοχόν, the Government of all Governments, or Polity of Politics.

But howsoever *Aristotle* in his Books of *Politiques* vouchsafe us not a Name, yet in his Books of *Ethiques* he affirmeth it may very properly be called (a) Τειμ δ' ἡ ἀπὸ πημνύτων, ἢ τιμωκρατικῶς λέγειν οἰκεῖον φάνεταί. L. 8. c. 12.

Polity by his Doctrine is the Government of many, or of a Multitude, and the Multitude he will have to be the poorer sort, inso-much that except they be poor, he will not allow it to be the Government of a Multitude, though they be never so many; for he makes Poverty the truest Note of a popular Estate; and as if to be Poor and to be Free were all one, he makes Liberty likewise to be a Mark of a popular Estate, for in his 4th Book, and 4th

(b) Ὅτι δῆμος ἐστὶν ὅταν ἐλεύθεροι κώριοι ᾖσιν, ὀλιγαρχία δ' ὅταν οἱ πλούσιοι.

Chapter, he resolves, That (b) a popular State is where free men governe, and an Oligarchy where rich men rule; as if rich men could not be free men: Now how Magistrates should be cho-

chosen for their Wealth, ἀπὸ τιμωμάτων, among all poor men is to me a Riddle.

Here I cannot but wonder why all our modern Politicians, who pretend themselves Aristotelians, should forsake their great Master, and account a Democracy a right or perfect Form of Government, when Aristotle brands it for a Transgression, or a depraved, or corrupted manner of Government. They had done better to have followed Aristotle, who (though other Grecians could not, yet he) could find out the name of a Timocracy for a right popular Government: But, it may be; our Politicians forbear to use the word Timocracy, because he affords an ill Character of it, saying, That of all the right Kinds of Government a Monarchy was the best, and a Timocracy the worst; βαλίστη ἢ βασιλεία, χυρὶς ἢ τιμοκρατία. Yet afterwards Aristotle in the same Chapter makes amends for it, in saying, a Democracy is the least vicious, because it doth but a little Transgress from a Timocracy.

But not to insist longer on the name of this nameless Form of Government, let Inquiry be made into the thing it self, that we may know what Aristotle saith is the Government of many, or of a Multitude, for the Common Good.

This Many, or Multitude is not the whole People, nor the major part of the People, or any chosen by the People to be their Representatives. No, Aristotle never saith, or meaneth any such things; for he tells us (a) (a) Ἡ δὲ βελτίστη πόλις οὐκ ἐκ πολλῶν ἀνθρώπων γίνεται, ἀλλ' ἐκ ὀλίγων καὶ ἀγαθῶν. L. 3. 1. 5. the best City doth not make any Artificer, or Handicraftsman a Citizen.

And if these be excluded out of the Number of Citizens, there will be but a few left in every City

to make his *Timocratical* Government, since Artificers or Mercenary men make far the greatest part of

a City; or to say (a) a City is a Community of free men, and yet to exclude the greatest part of the Inhabitants from being Citizens, is but a Mockery of

Freedom; for any man would think that a City being a Society of men assembled to the End to live well, that such men without whom a City cannot subsist, and who perform necessary Works, and minister to all in Publick, should not be barred from be-

ing Citizens, yet says Aristotle, (b) all those are not to be deemed Citizens without whom a City cannot subsist, except they abstain from necessary Works; (c) Οὐ γὰρ οἷόν τ' ἐπιτελεῖν τὰ τῆς ἀρετῆς ζῶντα βίον βάνανυσον ἢ δηλικόν. L. 3. c. 5.

for he resolves it (c) impossible for him to exercise the Work of Virtue, that useth a mechanical or mercenary Trade.

And he makes it one of his Conclusions, That (d) in ancient times among some men, no publick Workman did partake of the Government, untill the worst of Democracies were brought in. (d) Διὸ παρ' ἐνίοις ἔμετειχεν οἱ δημουργοὶ τὸ πάλαιον ἀρχαῖον πρὶν δημογν γένεσθαι τὸν ἔχρατον. L. 3. c. 4.

Again Aristotle will have his best popular Government consist of Free men, and accounts the poorer sort of People to be free men; how then will he exclude poor Artificers, who work for the Publick, from participating of the Government?

Further it is observable in *Aristotle*, That, quite contrary to the Signification of the Greek names, the Government of a Multitude may be termed an *Oligarchy* if they be rich, and the Rule of a few a *Democratie* if they be poor and free.

After much Incertainty of the Nature of this Politique Government; which wants a name; *Aristotle* at last resolves that this general Commonweal or *Politia* is compounded of a *Democratie* and *Oligarchy*; for, (a) to speak plainly, a Polity is a Mixture of a *Democratie* and

(a) Ἐστὶ γὰρ ἡ πολιτεία, ὡς ἀπλῶς εἰπεῖν, μίξις ὀλιγαρχίας καὶ δημοκρατίας. L. 4. c. 8.

That is, one perfect Form is made of two imperfect ones; this is rather a confounding than compounding of Government, to patch it up of two corrupt ones, by appointing an *Oligarchical Penalty* for the rich Magistrates that are chosen by *Election*, and a *Democratical Fee* for the poor Magistrates that are chosen by *Lot*.

Lastly it is to be noted, That *Aristotle* doth not offer to name any one City or Commonweal in the World, where ever there was any such Government: as he calls a *Politie*: for him to reckon it for a perfect Form of Government, and of such excellency as to carry the Name from all other, and yet never to have been extant in the World, may seem a Wonder; and a man may be excused for doubting, or for denying any such Form to be possible in Nature, if it cannot be made manifest what it is, nor when, nor where it ever was.

In Conclusion, since *Aristotle* reckons but three kinds of perfect Government, which are, First, a

Monar-

chy of one; Secondly, an *Aristocracy* of a few; Thirdly, a *Polity* of a Multitude; and if these two latter cannot be made good by him: there will remain but one right Form of Government only, which is *Monarchy*: And it seems to me, that *Aristotle* in a

(a) ἡ πρώτη ὁ
πολιτεία ἐν τοῖς
Ἑλλησιν ἐγένετο, μὲν
ταῖς βασιλείαις ἐκ
τῶν πολεμούντων.
L. 4. c. 13.

manner doth confess as much, where he informs us (a) that the first Commonwealth among the Grecians, after Kingdoms, was made of those that waged War: meaning that the Grecians, when they left to be governed by Kings, fell to be governed by an Army: their

Monarchy was changed into a *Stratocracy*, and not into an *Aristocracy* or *Democracy*: for if Unity in Government, which is only found in *Monarchy*, be once broken, there is no Stay or Bound, untill it come to a constant standing Army; for the People or Multitude, as *Aristotle* teacheth us, can excell in no Vertue but Military, and that That is natural to them, and

(b) Πλείους δ' ἤδη
χαλεπὸν ἀκρεβῶδες
πρὸς πᾶσαν ἀρετὴν,
ἀλλὰ μάλιστα τὴν
πολεμικὴν· αὕτη
γὰρ ἐν πλῆθει γίγνε-
ται· διόπερ' ἔστι ταύ-
τῃ τὴν πολιτείαν

therefore in a popular Estate, (b) The Sovereign Power is in the Sword, and those that are possessed of the Arms. So that any Nation or Kingdom that is not charged with the keeping of a King, must perpetually be at the Charge of paying and keeping of an Army.

κυριώτατον τὸ προπολεμεῖν, καὶ μετέχουσιν αὐτῆς
οἱ κακημένοι τὰ ὄπλα. L. 3. c. 7.

These brief Observations upon *Aristotle's* perfect Forms of Government, may direct what to judge of those corrupted or imperfect Forms which he mentions; for *rectum est index sui & obloqui*, and he reckons them to be all one in Matter and Form, and to differ only in their End: the end of the Perfect Forms being for the Good of the Governed; and of the Imperfect, for the benefit only of the Governours. Now since *Aristotle* could not tell how to define or describe his Right or Perfect Forms of Government, it cannot be expected he can satisfy us concerning those he calls Imperfect: yet he labours and bestirs himself mainly in the business, though to little purpose; for howsoever the Title of his Book be Πολιτικῶν, of *Politiques*, and that he mentions πολιτεία for a special Form of Government, which hath the common name of a *Policy*: yet when he comes to dispute in particular of Government, he argues only about *Democracies* and *Oligarchies*, and therein he is copious, because only those which he calls corrupt Forms of Governments were common in *Greece* in his dayes. As for an *Aristocracy*, or a *Policy* which he mentions, they are only Speculative Notions, or Airy Names, invented to delude the World, and to persuade the People, that under those quaint Terms, there might be found some subtile Government, which might at least equal, if not excell *Monarchy*: And the Inventers of those fine Names were all but Rebels to *Monarchy*, by *Aristotle's* confession, where he saith, the first *Commonwealths* of *Greece* after Kings were left, were made of those that waged War. l. 4. c. 13.

As *Aristotle* is irresolute to determine what are truly Perfect *Aristocracies* and *Policies*, so he is to

seek in describing his imperfect Forms of Government, as well *Oligarchies* as *Democracies*, and therefore he is driven to invent several sorts of them, and to confound himself with Subdivisions: we will alledge some of his words. *The cause why there be many kinds of Commonweals is, for that there are many parts of every City. Sometimes all these parts are in a Commonweal, sometimes more of them, sometimes fewer: whence it is manifest, that there are many Commonweals differing from each other in kind: because the parts of them differ after the same manner. For a Commonweal is the Order of Magistrates distributed, either according to the Power of them that are partakers of it, or according to some other common equality belonging to Poor and Rich, or some other thing common to both. It is therefore necessary, that there be so many Commonweals as there are Orders, according to the excellencies and differences of Parts. But it seemeth principally there are but two chief kinds of Commonweals; the Democracy and the Oligarchy: for they make the Aristocracy a branch of Oligarchy, as if it were a kind of Oligarchy; and that other which is properly a Policy, to be a branch of Democracy. So they are wont to esteem of Commonweales, but it is both truer and better; that there being two right Forms, or one, that all the other be transgressions. Here we find Aristotle of several minds, sometimes he is for many Commonweales, sometimes for two, or sometimes for one. As for his many Commonweals, if he allow them according to the several parts of a City, he may as well make three thousand kinds of Commonweals, as three: if two Artificers and three Souldiers should govern, that should be one kind of Commonweal: if four Husband-*

bandmen, and five Merchants, that would be a second sort; or six Taylors, and ten Carpenters, a third sort, or a dozen Saylor, and a dozen Porters, a fourth; and so in *infinitum*, for *Aristotle* is not resolved how many parts to make of a City, or how many Combinations of those Parts; and therefore in his Reckoning of them, he differs from himself, sometimes makes more, sometimes fewer Parts: and oft concluding at the end of his Accompt with *et cetera's*: and confessing that one and the same man may act several Parts; as he that is a Souldier, may be a Husbandman & an Artificer: and in his fourth Book and fourth Chapter, he seems to reckon up eight parts of a City, but in the Tale of them, he misses or forgets the sixth. 1. He names the *Plowman*. 2. The *Artificer*. 3. The *Tradesman*, or *Merchant*. 4. The *mercenary Hireling*. 5. The *Souldier*, (here *Aristotle* falls foul upon *Plato*, for making but four parts of a City. 1. *The Weaver*. 2. *The Plowman*. 3. *The Taylor*. 4. *the Carpenter*. Afterwards, as if these were not sufficient, he addeth the *Smith*, and the *Freeder of necessary Cattle*, the *Merchant*, and the *ingrosser* or *Retailer*) whilest *Aristotle* was busie in this Reprehension of *Plato*, he forgets himself, and skips over his sixth part of a City, and names the 7. *rich men*, 8. *the Magistrates*. In the same Chapter, he offers at another Division of the Parts of a City or Commonwealth, first dividing it into a *Populacy*, and *Nobility*. The People he divides first into *Husbandmen*. 2. *Into Artificers*. 3. *Into Merchants*, or *those that use Buying or Selling*. 4. *Into those that frequent the Seas*, of whom some follow the *War*, others seek for *Gain*, some are *Carriers* or *Transporters*, others *Fishermen*. 5. *Handicraftsmen that possess so little goods, that they*

cannot be idle. 6. Those that are not free on both sides, and any other such like Multitude of People. The kinds of Noblemen are distinguished by Riches, by Lineage, by Vertue, by Learning, and other such like things.

That there may be more Parts of a Commonweal than are here numbred, *Aristotle* confesseth or supposeth; and of a Multitude of Parts, and of a Multitude of Mixtures of such Parts may be made a World of Forms of *Oligarchies* and *Democracies*.

This Confusion of the Parts and Kinds of Commonweals drove *Aristotle* rather to rest upon the Division of *Rich* and *Poor*, for the main parts of a Commonweal, than any other. The distinction of a *Few* and of a *Multitude*, or the whole People, might seem more proper to distinguish between an *Oligarchy* and a *Democracy*; but the Truth is, *Aristotle* looking upon the Cities of *Greece*, and finding that in every of them, even in *Athens* it self, there were many of the People that were not allowed to be Citizens, and to participate in the Government, and that many times He was a Citizen in one sort of Government, who was not a Citizen in another, and that Citizens differed according to every Commonweal; he considered that if he should place a Right in the whole People, either to govern, or to chuse their Form of Government, or the Parties that should govern: he should hereby condemn the Government of all the Cities in *Greece*, and especially of *Aristocracy*, which, as he saith, allows no Artificer to be a Citizen; and besides, he should thereby confute a main Principle of his own *Politiques*, which is, that some men are born slaves by Nature; which quite contradicts the Position, that all men are born equal and free; and therefore *Aristotle* thought it

it fitter to allow all imaginable Forms of Government, that so he might not disparage any one City, than to propound such a Form as might condemn and destroy all the rest.

Though *Aristotle* allow so many several Forms of corrupted Governments; yet he insists upon no one Form of all those that he can define or describe, in such sort, that he is able to say that any one City in all *Greece* was governed just according to such a Form; his diligence is only to make as many Forms as the giddy or inconstant Humour of a City could happen upon; he freely gives the People Liberty to invent as many Kinds of Government as they please, provided he may have Liberty to find Fault with every one of them; it proved an easier Work for him to find Fault with every Form, then to tell how to amend any one of them; he found so many Imperfections in all sorts of Commonweals, that he could not hold from reproving them before ever he tells us what a Commonweal is, or how many sorts there are; and to this Purpose he spends his whole second Book in setting out, and correcting the chief Commonweals of *Greece*, and among others the *Lacedemonian*, the *Cretan*, and *Carthaginian* Commonweals; which three he esteems to be much alike, and better than any other, yet he spares not to lay open their Imperfections, and doth the like to the *Athenian*; wherein he breaks the Rule of Method, by delivering the Faults of Commonweals, before he teach us what a Commonweal is; for in his first Book, he speaks only of the Parts of which a City, or a Commonweal is made, but tells us not what a City or Commonweal is, untill he come to his third Book, and there in handling the

Sorts of Government, he observes no Method at all, but in a disorderly way, flies backward and forward from one sort to another: and howsoever there may be observed in him many Rules of *Policy* touching Government in general, yet without Doubt where he comes to discourse of particular Forms, he is full of Contradiction, or Confusion, or both: it is true, he is brief and difficult, the best Right a man can do him, is to confess he understands him not; yet a diligent Reader may readily discern so many Irregularities and Breaches in *Aristotle's* Books of *Politiques*, as tend to such Distraction or Confusion, that none of our new Politicians can make Advantage of his Principles, for the Confirmation of *an original Power by Nature in the People*, which is the only Theme now in Fashion: For *Aristotle's* Discourse is of such Commonweals as were founded by particular Persons, as the *Chalcedonian* by *Phaleas*, the *Milesian* by *Hippodamas*, the *Lacedemonian* by *Lycurgus*, the *Cretan* by *Minos*, the *Athenian* by *Solon*, and the like: But the natural Right of the People to found, or elect their Kind of Government is not once disputed by him: It seems the *underived Majesty of the People*, was such a metaphysical piece of Speculation as our grand Philosopher was not acquainted with; he speaks very contemptuously of the Multitude in several Places, he affirms that the *People are base or wicked Judges in their own Cases*,
Lib. 3. c. 9. οἱ πλείστοι θάυλοι κριταὶ περὶ τῶν οἰκείων and that many of them differ nothing from beasts.
Lib. 3. c. 11. τί διαφέρουσιν ἔνιοι τῶν θυρίων; and again he saith, *The Common People or Freemen are such as are neither Rich, nor in Reputation for Virtue, and it is not safe to commit to them great Governments,*
for

for, by reason of their Injustice and Unskilfulness, they would do much Injustice, and commit many Errors; and it is pleasanter to the multitude to live Disorderly, than Soberly, ἡδυν γὰρ τοῖς πολλοῖς τὸ ζῆν ἀτάκτως ἢ τὸ σωφρόνως. If Aristotle had believed a Publick Interest to have been in the People, to the enabling them to be their own carvers in point of Government, he would never have entangled himself with such intricate and ambiguous Forms of Commonweals, as himself cannot tell how to explain, nor any of his Commentators how to understand, or make Use of. Lib. 6. c. 4.

This one Benefit I have found by Reading Aristotle, that his Books of *Politiques* serve for an admirable Commentary upon that Text of Scripture, which saith, *In those dayes there was no King in Israel; every man did that which was right in his own eyes.* For he grants a liberty in every City, for any man, or multitude of men, either by Cunning, or Force, to set up what Government they please; and he will allow some name or other of a Commonweal, which in effect is to allow every man to do what he lists, if he be able; hence it is, that by the confession of Aristotle, the first Commonweals in Greece, after Kings were given over, were made of those that waged War; those several kinds of Commonweals, were all summed up into the government of an Army; for (a) it is, saith Aristotle, in their power, who manage Arms to continue, or not continue the Form of Government, whereby the Estate is governed, which is nothing else but a Stratocratic, or Military Government. We cannot much blame

Οἱ γὰρ τῶν ὀπλῶν
κύριοι, καὶ μὴ
καὶ μὴ μένειν κύ-
ριοι τῷ πολι-
τείαν. L. 7. c. 9.

Aristotle for the Incertainty, and Contrariety in him about the sorts of Government, if we consider him as a Heathen; for it is not possible for the Wit of man to search out the first Grounds or Principles of Government, (which necessarily depend upon the original of Property) except he know that at the Creation one man alone was made, to whom the Dominion of all things was given, and from whom all men derive their Title. This Point can be learnt only from the Scriptures: as for the imaginary Contract of People, it is a Fancy not improbable only, but impossible, except a multitude of men at first had sprung out, and were engendred of the Earth, which *Aristotle* knows not whether he may believe, or no: If Justice (which is to give every man his Due) be the End of Government, there must necessarily be a Rule to know how any man at first came to have a Right to any thing to have it truly called his. This is a Point *Aristotle* disputes not; nor so much as ever dreamt of an original Contract among People: he looked no farther in every City, than to a Scambling among the Citizens, whereby every one snatcht what he could get: so that a violent Possession was the first, and best Title that he knew.

The main Distinction of *Aristotle* touching perfect or Right Forms of Government from those that are imperfect or corrupt, consists solely in this Point, that where the Profit of the governed is respected there is a right Government, but where the Profit of the Governours is regarded, there is a Corruption or Transgression of Government. By this it is supposed by *Aristotle*, that there may be a Government only for the Benefit of the Governours;
this

this Supposition to be false, may be proved from *Aristotle* himself; I will instance about the Point of Tyranny.

Tyranny, saith *Aristotle*, (a) is a despotical or masterly Monarchy; now he confesseth, that (b) in truth the masterly Government is profitable both to the Servant by Nature, and the Master by Nature, and he yields a solid reason for it, saying, (c) It is not possible, if the Servant be destroyed, that the Mastership can be saved; whence it may be inferred, That if the Masterly Government of Tyrants cannot be safe without the Preservation of them whom they govern, it will follow that a Tyrant cannot govern for his own Profit only: and thus his main Definition of Tyranny fails, as being grounded upon an impossible Supposition by his own Confession. No Example can be shewed of any such Government that ever was in the World, as *Aristotle* describes a Tyranny to be; for under the worst of Kings, though many particular men have unjustly suffered, yet the Multitude, or the People in general have found Benefit and Profit by the Government.

It being apparent that the different kinds of Government in *Aristotle*, arise onely from the difference of the number of Governours, whether one, a few, or many: there may be as many several Forms of Governments as there be several Numbers, which are infinite; so that not onely the several Parts of a City or Commonweal, but also the several Numbers of such Parts may cause multiplicity of Forms of Government by *Aristotle's* Principles.

It

It is further observable in Assemblies, that it is not the whole Assembly, but the major part onely of the Assembly that hath the Government; for *that which pleaseth the most, is alwayes ratified*, saith Aristotle, *lib. 4. c. 4.* by this means one and the same Assembly may make, at one Sitting, several Forms of Commonweals, for in several Debates and Votes the same number of men, or all the self-same men do not ordinarily agree in their Votes; and the least Disagreement, either in the Persons of the men, or in their number, alters the Form of Government. Thus in a Commonweal, one part of the Publick Affairs shall be ordered by one Form of Government, and another part by another Form, and a third part by a third Form, and so *in infinitum*. How can that have the Denomination of a Form of Government, which lasts but for a moment onely, about one fraction of Business? for in the very instant, as it were in the Twinkling of an eye, while their Vote lasteth, the Government must begin and end.

To be governed, is nothing else but to be obedient and subject to the Will or Command of another; it is the Will in a man that governs; ordinarily mens Wills are divided according to their several Ends or Interests; which most times are different, and many times contrary the one to the other, and in such cases where the Wills of the major part of the Assembly do unite and agree in one Will, there is a *Monarchy* of many Wills in one, though it be called an *Aristocracy* or *Democracy*, in regard of the several Persons; it is not the many Bodies, but the one Will or Soul of the Multitude that

that governs. (a) *Where one is set up out of many, the People becometh a Monarch, because many are Lords, not separately, but also together as one; therefore such a People as if it were a Monarch, seeks to bear Rule alone* L. 4. c. 4.

(a) Μόναρχος ὁ δῆμος γίνεται, σύνθετον εἰς ἓκ πολλῶν οἱ πολλοὶ κύριον εἶσιν ἕκαστος ὡς ἕκαστος, ἀλλὰ πάντες. ὁ δὲ ἐν τοιούτῳ δῆμος αὐτὸς μόναρχος ὡς ζητεῖ μοναρχεῖν.

It is a false and improper Speech to say that a whole Multitude, Senate, Council, or any Multitude whatsoever doth govern where the major part only rules; because many of the Multitude that are so assembled, are so far from having any part in the Government, that they themselves are governed against and contrary to their Wills; there being in all Government various and different Debates and Consultations, it comes to pass oft-times, that the major part in every Assembly, differs according to the several Humours or Fancies of men; those who agree in one Mind, in one Point, are of different Opinions in another; every Change of Business, or new Matter begets a new major part, and is a Change both of the Government and Governours; the Difference in the Number, or in the Qualities of the Persons that govern, is the only thing that causes different Governments, according to *Aristotle*, who divides his Kinds of Government to the Number of one, a few, or many. As amongst the *Romans* their Tribunitial Laws had several Titles, according to the Names of those Tribunes of the People, that preferr'd and made them. So in other Governments, the Body of their Acts and Ordinances,

ces, is composed of a Multitude of momentary Monarchs, who by the Strength and Power of their Parties or Factions are still under a kind of a civil War, fighting and scratching for the legislative miscellany, or medly of several Governments. If we consider each Government according to the nobler Part of which it is composed, it is nothing else but a Monarchy of Monothelites, or of many men of one Will, most commonly in one Point only: but if we regard only the baser part, or Bodies of such Persons as govern, there is an interrupted Succession of a Multitude of short-lived Governments, with as many Intervalls of Anarchy; so that no man can say at any time, that he is under any Form of Government; for in a shorter time than the word can be spoken, every Government is begun and ended. Furthermore in all Assemblies, of what Quality soever they be, whether *Aristocratical* or *Democratical*, as they call them, they all agree in this one Point, to give that honourable Regard to Monarchy, that they do interpret the major, or prevailing part in every Assembly to be but as one man, and so do feign to themselves a kind of Monarchy.

Though there be neither Precept nor Practice in Scripture, nor yet any Reason alledged by *Aristotle* for any Form of Government, but only Monarchy; yet it is said that it is evident to common Sense, that of old time *Rome*, and in this present Age *Venice*, and the *Low-Countries*, enjoy a Form of Government different from Monarchy: Hereunto it may be answered, That a People may live together in Society, and help one another; and yet not be under any Form of Government;

ment; as we see Herds of Cattel do, and yet we may not say they live under Government. For Government is not a Society only to live, but to live well and vertuouſly. This is acknowledged by Aristotle, who teacheth that
(a) the End of a City, is to live blessedly and honestly. Political Communities are ordained for honest Actions, but not for living together only.

(a) Τέλος πόλεως τὸ εὖ ζῆν δίδαιμύ-
τως καὶ ἡσλῶς. τῶν
καλῶν πράξεων χά-
ριν διπλέον ἢ τὴν
πολιτικὴν κοινωνίαν, ἀλλὰ ὃ τὸ σιζῆν.

Now there be two things principally required to a blessed and honest life: Religion towards God, and Peace towards men: that is, a quiet and peaceable Life in all Godliness and Honesty, 1 Tim. 2. 2. Here then will be the Question, Whether Godliness and Peace can be found under any Government but Monarchy, or whether Rome, Venice, or the Low-Countries did enjoy these under any popular Government. In these two Points, let us first briefly examine the Roman Government, which is thought to have been the most glorious.

For Religion, we find presently after the Building of the City by Romulus, the next King, Numa, most devoutly established a Religion, and began his Kingdom with the Service of the Gods; he forbade the Romans to make any Images of God, which Law lasted and was observed 170 Years, there being in all that time no Image or Picture of God, in any Temple or Chappel of Rome; also he erected the Pontifical Colledge, and was himself the first Bishop or Pontifex; These Bi-
shops

shops were to render no Account either to the Senate or Commonalty. They determined all Questions concerning Religion, as well between Priests as between private men: They punished inferiour Priests, if they either added or detracted from the established Rites, or Ceremonies, or brought in any new thing into Religion. The chief Bishop, *Pontifex Maximus*, taught every man how to honour and serve the Gods. This Care had Monarchy of Religion.

But after the Expulsion of Kings, we do not find during the Power of the People, any one Law made for the Benefit or Exercise of Religion: there be two Tribunitian Laws concerning Religion, but they are meerly for the Benefit of the Power of the People, and not of Religion. *L. Papirius*, a Tribune, made a Law called *Lex Papiria*, that it should not be lawful for any to consecrate either Houses, Grounds, Altars, or any other things without the Determination of the People. *Domitius Aenobarbus* another Tribune enacted a Law called *Domitia Lex*, that the Pontifical Colledge should not, as they were wont, admit whom they would into the Order of Priesthood, but it should be in the Power of the People; and because it was contrary to their Religion, that Church-Dignities should be bestowed by the common People, hence for very Shame he ordained, that the lesser part of the People, namely seventeen Tribes should elect whom they thought fit, and afterwards the Party elected should have his Confirmation or admission from the Colledge: thus by a Committee of seven Tribes taken out of thirty five, the ancient Form of Religion was alter'd and reduced to the Power of the lesser part of the People. This was the
great

great Care of the People to bring Ordination and Consecration to the Laity.

The Religion in *Venice*, and the *Low-Countries* is sufficiently known, much need not be said of them : they admirably agree under a seeming contrariety; it is commonly said, that one of them hath all Religions, and the other no Religion ; the Atheist of *Venice* may shake hands with the Sectary of *Amsterdam*. This is the Liberty that a popular estate can brag of, every man may be of any Religion, or no Religion, if he please ; their main Devotion is exercised only in opposing and suppressing Monarchy. They both agree to exclude the Clergy from meddling in Government, whereas in all Monarchies both before the Law of *Moses*, and under it, and ever since : all Barbarians, Græcians, Romans, Infidels, Turks, and Indians, have with one Consent given such Respect and Reverence to their Priests, as to trust them with their Laws ; and in this our Nation, the first Priests we read of before Christianity, were the *Druides*, who as *Cæsar* saith, *decided and determined Controversies, in Murder, in Case of Inheritance, of Bounds of Lands, as they in their Discretion judged meet ; they grant Rewards and Punishments*. It is a Wonder to see what high Respect even the great Turk giveth to his *Mufti*, or chief Bishop, so necessary is Religion to strengthen and direct Laws.

To consider of the Point of Peace, It is well known, that no People ever enjoyed it without Monarchy. *Aristotle* saith, *the Lacedæmonians preserved themselves by Warring ; and after they had gotten to themselves the Empire, then were they presently undone, for that they could not live at Rest, nor do any better Exercise, than the Exercise of War*, l. 2. c. 7.

As

After *Rome* had expelled Kings, it was in perpetual War, till the time of the Emperours: once only was the Temple of *Janus* shut, after the end of the first *Punique War*, but not so long as for one year, but for some Moneths. It is true, as *Orosius* saith, that for almost 700 years, that is, from *Tullus Hostilius* to *Augustus Cæsar*, only for one Summer, the Bowels of *Rome* did not sweat Blood. On the Behalf of the *Romans* it may be said, that though the Bowels of *Rome* did always sweat Blood, yet they did obtain most glorious Victories abroad. But it may be truly answered, if all the *Roman* Conquests had no other Foundation but Injustice; this alone soils all the Glory of her warlike Actions. The most glorious War that ever *Rome* had, was with *Carthage*; the Beginning of which War, Sir *Walter Raleigh* proves to have been most unjustly undertaken by the *Romans*, in confederating with the *Mamertines*, and Aiding of Rebels, under the Title of protecting their Confederates; whereas Kings many times may have just Cause of War, for recovering and preserving their Rights to such Dominions as fall to them by Inheritance or Marriage; a Popular Estate, that can neither marry, nor be Heir to another, can have no such Title to a War in a Foreign Kingdom; and to speak the Truth, if it be rightly considered, the whole time of the Popularity of *Rome*, the *Romans* were no other than the only prosperous and glorious Thieves, and Robbers of the World.

If we look more narrowly into the *Roman* Government, it will appear, that in that very Age, wherein *Rome* was most victorious, and seemed to be most popular, she owed most of her Glory to an apparent kind of *Monarchy*. For it was the Kingly Power

Power of the *Consuls*, who (as *Livy* saith) had the same Royal Jurisdiction, or absolute Power that the Kings had; not any whit diminished or abated, and held all the same Regal Ensignes of supreme Dignity, which helpt *Rome* to all her Conquests: whiles the Tribunes of the People were struggling at home with the Senate about Election of Magistrates, enacting of Laws, and calling to Account, or such other popular Affairs, the Kingly Consuls gained all the Victories abroad: Thus *Rome* at one and the same time was broken and distracted into two Shewes of Government; the Popular, which served only to raise Seditions and Discords within the Walls; whilest the Regal atchieved the Conquests of Foreign Nations and Kingdomes. *Rome* was so sensible of the Benefit and Necessity of *Monarchy*, that in her most desperate Condition and Danger, when all other Hopes failed her, she had still Resort to the Creation of a Dictator, who for the time was an absolute King; and from whom no Appeal to the People was granted, which is the royallest Evidence for *Monarchy* in the World; for they who were drawn to swear, they would suffer no King of *Rome*, found no Security but in Perjury, and breaking their Oath by admitting the Kingly Power in spite of their Teeth, under a new name of a Dictator or Consul: a just Reward for their wanton expelling their King for no other Crime they could pretend but Pride, which is most tolerable in a King of all men: and yet we find no particular Point of Pride charged upon him, but that he enjoyned the *Romans* to labour in cleansing, and casting of Ditches, and paving their Sinks: an Act both for the Benefit and Ornament of the City, and therefore com-

measurable in the King: But the Citizens of *Rome*, who had been Conquerours of all Nations round about them, could not endure of Warriors to become Quarriers, and Day-labourers. Whereas it is said, that *Tarquin* was expelled for the Rape committed by his Son on *Lucrece*; it is unjust to condemn the Father for the Crime of his Son; it had been fit to have petitioned the Father for the Punishment of the Offender: The Fact of young *Tarquin* cannot be excused, yet without wrong to the Reputation of so chaste a Lady as *Lucrece* is reputed to be, it may be said, she had a greater Desire to be thought chaste, than to be chaste; she might have died untouched, and unspotted in her Body, if she had not been afraid to be slandered for In chastity; both *Dionysius Halicarnassens*, and *Livie*, who both are her Friends, so tell the Tale of her, as if she had chosen rather to be a Whore, than to be thought a Whore. To say Truth, we find no other Cause of the Expulsion of *Tarquin*, than the Wantonness, and Licentiousness of the People of *Rome*.

This is further to be considered in the *Roman* Government, that all the time between their Kings, and their Emperours, there lasted a continued strife, between the Nobility and Commons, wherein by Degrees the Commons prevailed at last, so to weaken the Authority of the Consuls and Senate, that even the last sparks of *Monarchy* were in a manner extinguished, and then instantly began the Civil War, which lasted till the Regal Power was quickly brought home, and settled in *Monarchy*. So long as the Power of the Senate stood good for the Election of Consuls, the Regal Power was preserved

served in them, for the Senate had their first Institution from *Monarchy*: It is worth the noting, that in all those places that have seemed to be most popular, that weak Degree of Government, that hath been exercised among them, hath been founded upon, and been beholden unto *Monarchical* Principles, both for the Power of assembling, and manner of consulting: for the entire and gross Body of any People, is such an unweildy and diffused thing as is not capable of uniting, or congregating, or deliberating in an entire Lump, but in broken Parts, which at first were regulated by *Monarchy*.

Furthermore it is observable, that *Rome* in her chief Popularity, was oft beholden for her Preservation to the Monarchical Power of the Father over the Children: by means of this Fatherly Power, saith *Bodin*, the Romans flourished in all Honour and Vertue, and oftentimes was their Commonwealth thereby delivered from most imminent Destruction, when the Fathers drew out of the Consistory, their Sons being Tribunes publishing Laws tending to Sedition. Amongst others *Cassius* threw his Son headlong out of the Consistory, publishing the Law *Agraria* (for the Division of Lands) in the Behoof of the People, and after by his own private Judgment put him to Death, the Magistrates, Sergeants, and People standing thereat astonied, and not daring to withstand his Fatherly Authority, although they would with all their Power have had that Law for Division of Lands; which is sufficient Proof, this Power of the Father not only to have been sacred and inviolable, but also to have been lawful for him, either by Right or Wrong to

dispose of the Life and Death of his Children, even contrary to the Will of the Magistrates and People.

It is generally believed that the Government of Rome, after the Expulsion of Kings, was popular; Bodin endeavours to prove it, but I am not satisfied with his Arguments, and though it will be thought a Paradox, yet I must maintain, it was never truly popular.

First it is difficult to agree, what a popular Government is, Aristotle saith it is where *Many or a Multitude do rule*; he doth not say where *the People*, or the *major part of the People*, or the *Representors of the People govern*.

Bodin affirms *if all the People be interested in the Government, it is a Popular Estate*, Lib. 2. c. 1. but after in the same Chapter he resolves, that *it is a Popular Estate, when all the People, or the greater part thereof hath the Sovereignty*, and he puts the Case that if there be three-score thousand Citizens, and forty thousand of them have the Sovereignty, and twenty thousand be excluded, it shall be called a popular Estate: But I must tell him, though fifty nine thousand, nine hundred, ninety nine of them govern, yet it is no popular Estate, for if but one man be excluded, the same reason that excludes that one man, may exclude many hundreds, and many thousands, yea, and the major part it self; if it be admitted, that the People are or ever were free by Nature, and not to be governed, but by their own Consent, it is most unjust to exclude any one man from his Right in Government; and to suppose the People so unnatural, as at the first to have
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all consented to give away their Right to a major part, (as if they had Liberty given them only to give away, and not to use it themselves) is not onely improbable, but impossible; for the whole People is a thing so uncertain and changeable, that it alters every moment, so that it is necessary to ask of every Infant so soon as it is born its Consent to Government, if you will ever have the Consent of the whole People.

Moreover, if the Arbitrary Tryal by a Jury of twelve men, be a thing of that admirable Perfection and Justice as is commonly believed, wherein the *Negative Voice* of every single Person is preserved, so that the dissent of any of the twelve frustrates the whole Judgment: How much more ought the natural freedom of each man be preserved, by allowing him his *Negative Voice*, which is but a continuing him in that estate, wherein, it is confessed, Nature at first placed him; Justice requires that no one Law should bind all, except all consent to it, there is nothing more violent and contrary to Nature, than to allow a major part, or any other greater part less than the whole to bind all the People.

The next difficulty to discovering what a Popular Estate is, is to find out where the Supreme Power in the *Roman Government* rested; it is *Bodin's* opinion, that *in the Roman state the Government was in the Magistrates, the Authority and Counsel in the Senate, but the Sovereign Power and Majesty in the People.* Lib. 2. c. 1. So in his first Book his Doctrine is, that *the ancient Romans said, Imperium in Magistratibus, Authoritatem*

in Senatu, Potestatem in plebe, Majestatem in Populo jure esse dicebant. These four words *Command, Authority, Power, and Majesty* signifie ordinarily, one and the same thing, to wit, the Sovereignty, or supreme Power, I cannot find that *Bodin* knows how to distinguish them; for they were not distinct Faculties placed in several Subjects, but one and the same thing diversly qualified, for *Imperium, Autoritas, Potestas, and Majestas* were all originally in the Consuls; although for the greater shew the Consuls would have the Opinion, and Consent of the Senate who were never called together, nor had their Advice asked, but when and in what Points only it pleased the Consuls to propound: so that properly *Senatusconsultum* was only a Decree of the Consuls, with the Advice of the Senators: And so likewise the Consuls, when they had a mind to have the Countenance of an ampler Council, they assembled the *Centuries*, who were reckoned as the whole People, and were never to be assembled, but when the Consuls thought fit to propound some Business of great weight unto them; so that *jussus populi*, the Command of the People which *Bodin* so much magnifies, was properly *jussus Consulum*, the Command of the Consuls, by the Advice or Consent of the Assembly of the Centuries, who were a Body composed of the Senators, and the rest of the Patritians, Knights, and Gentlemen, or whole Nobility together with the Commons: for the same men who had Voices in Senate, had also their Votes allowed in the Assembly of the Centuries, according to their several Capacities.

It may further appear, that the Roman Government,

ment was never truly popular, for that in her greatest Show of Popularity, there were to be found above ten Servants for every Citizen or Freeman, and of those Servants, not one of them was allowed any Place, or Voice in Government: If it be said that the *Roman* Servants were Slaves taken in War, and therefore not fit to be Freemen; to this it may be answered, that if the Opinion of our modern Politicians be good, which holds that *all men are born Free by Nature*, or if but the Opinion of *Aristotle* be found, who saith that *by Nature some men are Servants, and some are Masters*, then it may be unnatural, or unjust to make all Prisoners in War Servants or (as they are now called) *Slaves*, a Term not used in the Popular Governments, either of *Rome* or *Greece*; for in both Languages, the usual word that doth answer to our late Term of *Slave*, is but *Servus* in Latin, and *Δούλος* in Greek. Besides, if the Wars of the *Romans*, by which they gained so many Servants were unjust, as I take all offensive War to be without a special Commission from God, and as I believe all the Roman Wars were, that were made for the Enlargement of their Empire, then we may conclude, that the *Romans* were the notablest Plagiaries, or Men-stealers in the World.

But to allow the lesser part of the People of *Rome*, who called themselves Citizens, to have had a just Right to exclude all Servants from being a part of the people of *Rome*, let us enquire whether the major part of those, whom they allowed to be Citizens, had the Government of *Rome*; whereby we may discover easily how notoriously the poorer and

greater part of the Citizens were guld of their Share in Government ; There were two famous manners of their assembling the People of *Rome* : the first was by *Classes*, as they called them, which were divided into *Centuries* ; the second was by *Tribes*, or *Wards* ; the former of these was a Ranking of the People, according to their Abilities or Wealth, the latter according to the Place or Ward, wherein every Citizen dwelt : In the Assemblies of neither of these, had the major part of the People the Power of Government, as may thus be made appear.

First, for the Assembly of the *Centuries*, there were six Degrees or *Classes* of men according to their Wealth ; the first *Classis* was of the richest men in *Rome*, none whereof were under 200 *l.* in Value : The Valuation of the second *Classis* was not under fourscore Pounds ; and so the 3. the 4. and the fifth *Classis* were each a Degree one under another. The sixth *Classis* contained the poorer sort, and all the Rabble. These six *Classes* were subdivided into Hundreds, or *Centuries*.

The first <i>Classis</i> had	98	} <i>CENTURIES.</i>
The 2. had	22	
The 3. <i>Classis</i> had.	20	
The 4. had	22	
The 5. <i>Classis</i> had	30	
The 6. <i>Classis</i> had	13	
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The *Classes*, and *Centuries* being thus ordered, when the Assembly came to give their Votes, they

they did not give their Voices by the Poll, which is the true popular way : but each Century Voted by it self, each Century having one Voice, the major part of the Centuries carried the Business : Now there being fourscore and eighteen Centuries in the first Classis, in which all the Patricians, Senators, Noblemen, Knights, and Gentlemen of *Rome*, were inrolled, being more in Number, and above half the Centuries, must needs have the Government, if they agreed all together in their Votes, because they Voted first, for when 97 Centuries had agreed in their Votes, the other Centuries of the inferiour Classis, were never called to Vote ; thus the Nobles, and richer men who were but few in Comparison of the Common People did bear the chief Sway, because all the poorer sort, or proletarian Rabble, were clap'd into the sixth Classis, which in reckoning were allowed but the single Voice of one Century, which never came to Voting : whereas in Number they did far exceed all the five other Classes or Centuries, and if they had been allowed the Liberty of other Citizens, they might have been justly numbered for a thousand Centuries, or Voices in the Assembly ; This Device of packing so many thousands into one Century, did exclude far the greatest part of the People from having a part in the Government.

Next, for the Assembly of the People of *Rome* by Tribes, it must be considered, that the Tribes did not give their Voices by the Poll altogether, which is the true way of popular Voting, but each Tribe or Ward did Vote by it self, and the Votes of the major part (not of the People but) of the Tribes

Tribes did sway the Government, the Tribes being unequal, as all Divisions by Wards usually are, because the Number of the People of one Tribe, is not just the same with the Number of the People of each other Tribe; whence it followed, that the major Number of the Tribes might possibly be the minor Number of the People, which is a destroying of the Power of the major Part of the People.

Adde herunto, that the Nobility of *Rome* were excluded from being present at the Assembly of the Tribes; and so the most considerable part of the People was wanting, therefore it could not be the Voices of the major part of the People, where a great part of the People were allowed no Voices at all, for it must be the major part of the whole, and not of a Part of the People, that must denominate a popular Government.

Moreover it must be noted, that the Assembly of the Tribes was not originally the Power of the People of *Rome*, for it was almost 40 years after the Rejection of Kings before an Assembly of Tribes were thought on, or spoken of; for it was the Assembly of the People by Centuries, that agreed to the Expulsion of Kings, & creating of Consuls in their Room, also the Famous Laws of the twelve Tables were ratified by the Assembly of the Centuries. This Assembly by Centuries, as it was more Ancient, than that by Tribes; so it was more truly popular, because all the Nobility, as well as the Commons, had Voices in it: The Assembly by Tribes, was pretended at first, only to elect Tribunes of the People, and other inferiour Magistrates, to determine of lesser Crimes that were not Capital, but only

only finable; and to decree that Peace should be made; but they did not meddle with denouncing War to be made, for that high Point did belong only to the Assembly of the Centuries; and so also did the judging of Treason, and other Capital Crimes. The Difference between the Assembly of the Tribes, and of the Centuries, is very material; for though it be commonly thought, that either of these two Assemblies were esteemed to be the People, yet in Reality it was not so, for the Assembly of the Centuries only could be said to be the People, because all the Nobility were included in it as well as the Commons, whereas they were excluded out of the Assembly of the Tribes; and yet in Effect, the Assembly of the Centuries was but as the Assembly of the Lords, or Nobles only, because the lesser, and richer part of the People had the Sovereignty, as the Assembly of the Tribes was, but the Commons only.

In maintenance of the popular Government of Rome, Bodin objects, that there could be no regal Power in the two Consuls, who could neither make Law, nor Peace, nor War. The Answer is, though there were two Consuls, yet but one of them had the Regality; for they governed by Turns, one Consul one Moneth, and the other Consul another Moneth; or the first one day, and the second another day. That the Consuls could make no Laws is false, it is plain by *Livy*, that they had the Power to make Laws, or War, and did execute that Power, though they were often hindered by the Tribunes of the People; not for that the Power of making Laws or War, was ever taken away from the Consuls, or communicated to the Tribunes, but

but only the Exercise of the Consular Power was suspended by a seeming humble way of *intercession* of the Tribunes ; The Consuls by their first Institution had a lawful Right to do those things, which yet they would not do by reason of the shortness of their Reigns, but chose rather to countenance their actions with the title of a Decree of the Senate (who were their private Counsel) yea, and sometimes with the Decree of the Assembly of the Centuries (who were their Public Counsel) for both the Assembling of the Senate, and of the Centuries, was at the Pleasure of the Consuls, and nothing was to be propounded in either of them, but at the Will of the Consuls : which argues a Sovereignty in them over the Senate and Centuries ; the Senate of *Rome* was like the House of Lords, the Assembly of the Tribes resembled the House of Commons, but the Assembling of the *Centuries*, was a Body composed of Lords and Commons united to Vote together.

The Tribunes of the People bore all the Sway among the Tribes, they called them together when they pleased, without any Order, whereas the Centuries were never Assembled without Ceremony, and Religious observation of the Birds by the Augurs, and by the Approbation of the Senate, and therefore were said to be *auspicata*, and *ex auctoritate Patrum*.

These things considered, it appears, that the Assembly of the Centuries was the only legitimate, and great Meeting of the People of *Rome* : as for any Assembling, or Electing of any Trustees, or Representatives of the People of *Rome*, in nature of
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the modern Parliaments, it was not in Use, or ever known in *Rome*.

Above two hundred and twenty years after the expulsion of Kings, a sullen humour took the Commons of *Rome*, that they would needs depart the City to *Janiculum*, on the other side of *Tyber*, they would not be brought back into the City, until a Law was made, That a *Plebiscitum*, or a Decree of the Commons might be observed for a Law; this Law was made by the Dictator *Hortensius*, to quiet the Sedition, by giving a part of the Legislative Power to the Commons, in such inferiour matters only, as by Toleration and Usurpation had been practised by the Commons. I find not that they desired an Enlargement of the Points which were the Object of their Power, but of the Persons, or Nobility that should be subject to their Decrees: the great Power of making War, of creating the greater Magistrates, of judging in Capital Crimes, remained in the Consuls, with the Senate, and Assembly of the Centuries.

For further manifestation of the broken and distracted Government of *Rome*, it is fit to consider the original Power of the Consuls, and of the Tribunes of the Commons, who are ordinarily called the Tribunes of the People.

First, it is undeniable, that upon the expulsion of Kings, Kingly power was not taken away, but only made Annual and changeable between two Consuls; who in their Turns, and by course had the Sovereignty, and all Regal power; this appears plainly in *Livy*, who tells us, that *Valerius Publicola* being Consul, he himself alone ordained
a Law,

a Law, and then assembled a general Session.

Turentillus Arsa inveighed and complained against the Consul's Government, as being so absolute, and in Name only less odious than that of Kings, but in Fact more cruel; for instead of one Lord the City had received twain, having Authority beyond all Measure, unlimited and infinite. *Sextius* and *Licinus* complain, that there would never be any indifferent Course, so long as the Nobles kept the Sovereign Place of Command, and the Sword to strike, whiles the poor Commons have only the Buckler; their Conclusion was, that it remains, that the Commons bear the Office of Consuls too, for that were a Fortress of their Liberty, from that day forward, shall the Commons be Partakers of those things, wherein the Nobles now surpass them, namely Sovereign Rule and Authority.

The Law of the twelve Tables affirms, *Regis imperio duo sunt, iique Consules appellantor*. Let two have regal Power, and let them be called Consuls: also the Judgment of *Livy* is, that the Sovereign Power was translated from Consuls to Decemvirs, as before from Kings to Consuls. These are proofs sufficient to shew the Royal Power of the Consuls.

About sixteen years after the first Creation of Consuls, the Commons finding themselves much run into Debt, by wasting their Estates in following the Wars; and so becoming, as they thought, oppressed by Usury, and cast into Prison by the Judgment, and Sentence of the Consuls, they grievously complained of Usury, and of the Power of the Consuls, and by Sedition prevailed, and obtained Leave to choose among themselves Magistrates called Tribunes of the People, who by their Intercession might preserve the Commons from being oppressed

pressed, and suffering Wrong from the Consuls: and it was further agreed, that the Persons of those Tribunes should be sacred, and not to be touched by any. By means of this Immunity of the Bodies of the Tribunes from all Arrests or other Violence, they grew in time by Degrees to such Boldness, that by stopping the legal Proceedings of the Consuls (when they pleased to intercede) they raised such an Anarchy oft times in Government, that they themselves might act, and take upon them, what Power soever they pleased (though it belonged not to them.) This Gallantry of the Tribunes was the Cause, that the Commons of *Rome*, who were diligent Pretenders to Liberty, and the great Masters of this part of Politiques, were thought the only famous Preservers, and Keepers of the Liberty of *Rome*. And to do them right, it must be confessed, they were the only men that truly understood the Rights of a *Negative Voice*; if we will allow every man to be naturally free till they give their Consent to be bound, we must allow every particular Person a *Negative Voice*; so that when as all have equal Power, and are as it were fellow-Magistrates or Officers, each man may impeach, or stop his Fellow-Officers in their Proceedings, this is grounded upon the general Reason of all them, which have any thing in Common, where he which forbiddeth, or denyeth, hath most Right, because his Condition in that Case is better than his which commandeth, or moveth to proceed; for every Law or Command, is in it self an Innovation, and a Diminution of some part of popular Liberty; for it is no Law except it restrain Liberty; he that by his negative Voice doth forbid or hinder the Proceeding of a new Law,

Law, doth but preserve himself in that Condition of Liberty, wherein Nature hath placed him, and whereof he is in present Possession; the Condition of him thus in Possession being the better, the stronger is his Prohibition, any single man hath a juster Title to his *Negative Voice*, than any Multitude can have to their Affirmative; to say the People are free, and not to be governed, but by their own Consent, and yet to allow a major part to rule the whole, is a plain Contradiction, or a destruction of natural Freedom. This the Commons of *Rome* rightly understood, and therefore the transcendent Power of the Negative Voice of any one Tribune, being able of it self to stay all the Proceedings, not of the Consuls and Senate only, and other Magistrates, but also of the rest of his fellow-Tribunes, made them seem the powerfulest men in all *Rome*; and yet in Truth they had no Power or Jurisdiction at all, nor were they any Magistrates, nor could they lawfully call any man before them, for they were not appointed for Administration of Justice, but only to oppose the Violence, and Abuse of Magistrates, by interceeding for such as appealed, being unjustly oppressed; for which Purpose at first they sate only without the Door of the Senate, and were not permitted to come within the Doors: this Negative Power of theirs was of Force only to hinder, but not to help the Proceedings in Courts of Justice; to govern, and not to govern the People. And though they had no Power to make Laws, yet they took upon them to propound Laws, and flattered and humoured the Commons by the *Agrarian* and *Frumentarian* Laws, by the first they divided the Common fields, and conquered Lands among

among the Common People; and by the latter, they afforded them Corn at a cheaper or lower price: by these means these Demagogues or Tribunes of the Commons led the Vulgar by the Noses, to allow whatsoever Usurpations they pleased to make in Government.

The Royal Power of the Consuls was never taken away from them by any Law that I hear of, but continued in them all the time of their pretended popular Government, to the very last, though repined at, and opposed in some particulars by the Commons.

The *No-Power*, or *Negative Power* of the Tribunes, did not long give content to the Commons, and therefore they desired, that one of the Consuls might be chosen out of the Commonalty: the eager propounding of this point for the Commons, and the diligent opposing of it by the Nobility or Senate, argues how much both parties regarded the Sovereign power of a Consul; the Dispute lasted fourscore years within two: the Tribunes pressing it upon all advantages of opportunity, never gave over till they carried it by strong hand, or stubbornness, hindring all Elections of the *Curule*, or greater Magistrates, for five years together, whereby the Nobles were forced to yield the Commons a Consul's place, or else an *Anarchy* was ready to destroy them all; and yet the Nobility had for a good while allowed the Commons *Military Tribunes with Consular Power*, which, in effect or substance, was all one with having one of the Consuls a Commoner, so that it was the bare Name of a Consul which the Commons so long strived for with the Nobility: In this contention,

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some Years Consuls were chosen, some years *Military* Tribunes in such Confusion, that the *Roman* Historians cannot agree among themselves, what Consuls to assign, or name for each Year, although they have *Capitoline* Tables, *Sicilian* and *Greek* Registers, and Kalenders, Fragments of *Capitoline* Marbles, *linen Books* or *Records* to help them: a good while the Commons were content with the Liberty of having one of the Consuls a Commoner; but about fourcore years after they enjoyed this Privilege, a Desire took them to have it enacted, that a Decree of the Commons called a *plebiscitum* might be observed for a Law, *Hortensius* the Dictator yielded to enact it, thereby to bring back the Seditious Commons, who departed to *Janiculum* on the other side of *Tybur*, because they were deeply engaged in Debt in regard of long Seditions and Dissensions. The eleventh Book of *Livy*, where this Sedition is set down, is lost; we have only a touch of it in *Florus* his Epitome, and *St. Augustine* mentions the Plundring of many Houses by the Commons at their departing: this Sedition was above 220 years after the Expulsion of Kings, in all which time, the People of *Rome* got the Spoil of almost all *Italy*, and the wealth of very many rich Cities: and yet the Commons were in so great Penury, and over whelmed with Debts that they fell to plunder the rich Houses of the Citizens, which sounds not much for the Honour of a popular Government. This communicating of a legislative Power to the Commons, touching Power of enfranchising Allies, Judgments Penal, and Fines, and those Ordinances that concerned the Good of the Commons called *Plebiscita*, was a dividing

of the Supreme Power, and the giving a Share of it to others, as well as to the Consuls, and was in effect to destroy the legislative Power, for to have two Supremes is to have none, because the one may destroy the other, and is quite contrary to the indivisible nature of Sovereignty. The Truth is, the Consuls, having but annual Sovereignty, were glad for their own Safety, and Ease in Matters of great Importance, and Weight, to call together sometimes the Senate, who were their ordinary Council, and many times the Centuries of the People, who were their Council extraordinary, that by their Advice they might countenance, and strengthen such Actions as were full of Danger and Envy: and thus the Consuls by weakening their original Power brought the Government to Confusion, civil Dissension, and utter Ruine: so dangerous a thing it is to shew Favour to Common People, who interpret all Graces and Favours for their Rights, and just Liberties: the Consuls following the Advice of the Senate or People, did not take away their Right of Governing no more than Kings lose their Supremacy by taking Advice in Parliaments.

Not only the Consuls, but also the Pretors and Censors (two great Offices, ordained only for the ease of the Consuls, from whom an Appeal lay to the Consuls) did in many things exercise an arbitrary or legislative Power in the Absence of the Consuls, they had no Laws to limit them: for many Years after the Creation of Consuls, ten men were sent into Greece to choose Laws; and after the 12 Tables were confirmed, whatsoever the Pretors, who were but the Consuls Substitutes, did

command, was called *jus honorarium*; and they were wont at the Entrance into their Office to collect, and hang up for publick View, a Form of Administration of Justice which they would observe, and though the *edictum Prætoris*, expired with the Prætors Office; yet it was called *Edictum perpetuum*.

What Peace the Low-Countries have found since their Revolt is visible; it is near about an hundred Years since they set up for themselves, of all which time only twelve years they had a Truce with the Spaniard, yet in the next year, after the Truce was agreed upon, the War of *Juliers* brake forth, which engaged both Parties; so that upon the matter, they have lived in a continued War, for almost 100 Years: had it not been for the Aid of their Neighbours, they had been long ago swallowed up, when they were glad humbly to offer their new hatch'd Commonweal, and themselves Vassals to the Queen of *England*, after that the French King *Hen. 3.* had refused to accept them as his Subjects; That little Truce they had, was almost as costly as a War; they being forced to keep about thirty thousand Souldiers continually in Garrison. Two things they say they first fought about, Religion and Taxes, and they have prevailed it seems in both, for they have gotten all the Religions in Christendome, and pay the greatest Taxes in the World; they pay Tribute half in half for Food, and most necessary things, paying as much for Tribute as the price of the thing sold; Excise is paid by all Retailers of Wine, and other Commodities; for each Tun of Beer six Shillings, for each Cow for the Pail two Stivers every week: for Oxen, Horses, Sheep, and other beasis sold in the Market
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the twelfth part at least, be they never so oft sold by the year to and fro, the new Master still pays as much: they pay five Stivers for every Bushel of their own Wheat, which they use to grinde in publick Mills: These are the Fruits of the Low-Country War.

It will be said that *Venice* is a Commonwealth that enjoys Peace. She indeed of all other States hath enjoyed of late the greatest Peace; but she owes it not to her kind of Government, but to the natural Situation of the City, having such a Banck in the Sea of neer threecore Miles, and such Marshes towards the Land, as make her unapproachable by Land, or Sea; to these she is indebted for her Peace at home, and what Peace she hath abroad she buys at a dear Rate; and yet her Peace is little better than a continued War; The City always is in such perpetual Fears, that many besieged Cities are in more Security; a Senator or Gentleman dares not converse with any Stranger in *Venice*, shuns Acquaintance, or dares not own it: they are no better than Banditos to all humane Society. Nay, no People in the World live in such Jealousie one of another, hence are their intricate Solemnities, or rather Lotteries in Election of their Magistrates, which in any other Place, would be ridiculous and useless. The Senators or Gentlemen are not only jealous of the Common People, whom they keep disarmed, but of one another, they dare not trust any of their own Citizens to be a Leader of their Army, but are forced to hire, and entertain Foreign Princes for their Generals, excepting their Citizens from their Wars, and hiring others in their Places; it cannot be said, that People live

in Peace which are in such miserable Fears continually.

The *Venetians* at first were subject to the *Roman* Emperour; and for fear of the Invasion of the *Hunnes* forsook *Padua*, and other places in *Italy*, and retired with all their Substance to those Islands where now *Venice* stands: I do not read they had any Leave to desert the defence of their Prince and Countrey, where they had got their Wealth, much less to set up a Government of their own; it was no better than a Rebellion, or Revolting from the *Roman* Empire. At first they lived under a kind of *Oligarchy*, for several Islands had each a Tribune, who all met, and governed in common: but the dangerous Seditions of their Tribunes, put a necessity upon them to choose a Duke for Life, who, for many hundreds of years, had an Absolute Power, under whose Government *Venice* flourished most, and got great Victories, and rich Possessions. But by insensible degrees, the Great Council of the Gentlemen have for many years been lessening the Power of their Dukes, and have at last quite taken it away. It is a strange Errour for any man to believe, that the Government of *Venice* hath been always the same that it is now: he that reads but the History of *Venice*, may find for a long time a Sovereign Power in their Dukes: and that for these last two hundred years, since the diminishing of that Power, there hath been no great Victories and Conquests obtained by that Estate.

That which exceeds admiration is, that *Contarini* hath the confidence to affirm the present Government of *Venice* to be a mixed Form of *Monarchy*, *Democratie*, and *Aristocratie*: For, whereas he makes the

the Duke to have the Person and Shew of a King ; he after confesseth, that the Duke can do nothing at all alone, and being joyned with other Magistrates, he hath no more Authority than any of them : also the power of the Magistrates is so small, that no one of them, how great soever he be, can determine of any thing of moment, without the allowance of the Council. So that this Duke is but a man dressed up in Purple, a King only in Pomp and Ornament, in Power but a Senator, within the City a Captive, without a Traytor, if he go without Leave. As little reason is there to think a Popular Estate is to be found in the great Council of *Venice*, or *S. P. Q. V.* for it doth not consist of the fortieth part of the People, but only of those they call Patritians or Gentlemen ; for the Commons, neither by themselves, nor by any chosen by them for their Representatives, are admitted to be any part of the Great Council : and if the Gentlemen of *Venice* have any Right to keep the Government in their own hands, and to exclude the Commons, they never had it given them by the People, but at first were beholding to *Monarchy* for their Nobility. This may further be noted, that though *Venice* of late enjoyed Peace abroad, yet it had been with that Charge, either for Fortification and Defence, or in Bribery so excessive, whereby of late upon any terms they purchased their Peace, that it is said their Taxes are such, that Christians generally live better under the *Turk*, than under the *Venetians*, for there is not a grain of Corn, a spoonful of Wine, Salt, Eggs, Birds, Beasts, Fowl, or Fish sold, that payeth not a certain Custom : upon occasions the Labourers and Crafts-men pay a Rate by the Poll monthly,

they receive incredible Gains by Usury of the Jews; for in every City they keep open Shops of Interest, taking pawns after fifteen in the hundred, and if at the years end it be not redeemed, it is forfeited, or at the least, sold at great loss. The Revenues which the very Courtizans pay for Toleration, maintains no less than a dozen of Gallies.

By what hath been said, it may be judged how unagreeable the popular Government of *Rome* heretofore, and of *Venice*, and the *United Provinces* at present, are, either for Religion or Peace (which two are principal ingredients of Government) and so consequently not fit to be reckoned for Forms, since whatsoever is either good or tolerable in either of their Governments, is borrowed or patched up of a broken, and distracted Monarchy. Lastly, though *Venice* and the *Low Countreys* are the only remarkable places in this age that reject Monarchy; yet neither of them pretend their Government to be founded upon any original Right of the People, or have the Common people any power amongst them, or any chosen by them. Never was any popular Estate in the World famous for keeping themselves in peace; all their glory hath been for Quarrelling and Fighting.

Those that are willing to be perswaded, that the power of Government is originally in the People, finding how impossible it is for any people to exercise such power, do surmise, that though the people cannot govern, yet they may choose Representatives or Trustees, that may manage this power for the People, and such Representatives must be surmised to be the People. And since such Representatives cannot

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not truly be chosen by the People, they are said to divide the People into several parts, as of Provinces, Cities, and Burrough-Towns, and to allow to every one of those parts to choose one Representor or more of their own : and such Representors, though not any of them be chosen by the whole, or major part of the People, yet still must be surmised to be the People ; nay, though not one of them be chosen either by the People, or the major part of the People of any Province, City, or Burrough, for which they serve, but onely a smaller part, still it must be said to be the People. Now when such Representors of the People do Assemble or meet, it is never seen that all of them can at one time meet together ; and so there never appears a true, or full Representation of the whole People of the Nation, the Representors of one part or other being absent, but still they must be imagined to be the People. And when such imperfect Assemblies be met, though not half be present, they proceed : and though their number be never so small, yet it is so big, that in the debate of any Business of moment, they know not how to handle it, without referring it to a fewer number than themselves, though themselves are not so many as they should be. Thus those that are chosen to represent the People, are necessitated to choose others, to represent the Representors themselves ; a Trustee of the North doth delegate his power to a Trustee of the South ; and one of the East may substitute one of the West for his Proxy : hereby it comes to pass, that Publick Debates which are imagined to be referred to a general Assembly of a Kingdom, are contracted into a particular or private
Assembly,

Assembly, than which nothing can be more destructive, or contrary to the nature of Publick Assemblies. Each company of such Trustees hath a Prolocutor, or Speaker; who, by the help of three or four of his fellows that are most active, may easily comply in gratifying one the other, so that each of them in their turns may sway the Trustees, whilst one man, for himself or his friend, may rule in one Business, and another man for himself or his friend prevail in another cause, till such a number of Trustees be reduced to so many petty Monarchs as there be men of it. So in all Popularities, where a General Council, or great Assembly of the People meet, they find it impossible to dispatch any great Action, either with Expedition or Secrecy, if a publick free Debate be admitted; and therefore are constrained to Epitomize, and sub-epitomise themselves so long, till at last they crumble away into the Atomes of *Monarchy*, which is the next degree to *Anarchy*; for *Anarchy* is nothing else but a broken *Monarchy*, where every man is his own *Monarch*, or Governour.

Whereas the Power of the People in choosing both their Government and Governours, is of late highly magnified, as if they were able to choose the best and excellentest men for that purpose. We shall find it true what *Aristotle* hath affirmed, that to choose well is the office of him that hath Knowledge; none can choose a Geometrician but he that hath skill in Geometry, l. 3. c. 11. for, saith he, All men esteem not Excellency to be one and the same, l. 3. c. 17.

A great deal of talk there is in the World of the Freedom and Liberty that they say is to be found in Popular Commonweals ; it is worth the enquiry how far, and in what sense this Speech of Liberty is true. *True Liberty is for every man to do what he list, or to live as he please, and not to be tied to any Laws.* But such Liberty is not to be found in any Commonweal ; for there are more Laws in Popular Estates than any where else ; and so consequently less Liberty : and Government many say was invented to take away Liberty, and not to give it to every man ; such Liberty cannot be ; if it should, there would be no Government at all : therefore *Aristotle, l. 6. cap. 4. It is profitable not to be lawful to do every thing that we will, for power to do what one will, cannot restrain that Evil that is in every man ;* so that true Liberty cannot, nor should not be in any Estate. But the onely Liberty that the talkers of Liberty can mean, is a Liberty for some men to *Rule and to be Ruled*, for so *Aristotle* expounds it ; one while to Govern, another while to be Governed ; to be a King in the forenoon, and a Subject in the afternoon ; this is the onely Liberty that a Popular Estate can brag of, that where a *Monarchy* hath but one King, their Government hath the liberty to have many Kings by turns. If the Common People look for any other Liberty, either of their Persons or their Purles, they are pitifully deceived, for a perpetual Army and Taxes are the principal materials of all Popular Regiments : never yet any stood without them, and very seldom continued with them ; many popular Estates have started up, but few have lasted ; *It is no hard matter for any kind of Government to last one, or two, or three*

three days, l. 6. c. 5. For all such as out of hope of Liberty, attempt to erect new Forms of Government, he gives this prudent Lesson. *We must look well into the continuance of Time, and remembrance of many Years, wherein the means tending to establish Community had not lain hid, if they had been good and useful; for almost all things have been found out, albeit some have not been received, and other some have been rejected, after men have had experience of them; l. 2. c. 5.*

It is believed by many, that at the very first Assembling of the People, it was unanimously agreed in the first place, that the Consent of the major part should bind the whole; and that though this first Agreement cannot possibly be proved; either how, or by whom it should be made; yet it must necessarily be believed or supposed, because otherwise there could be no lawful Government at all. That there could be no lawful Government, except a general Consent of the whole People be first furnished, is no sound proposition; yet true it is, that there could be no popular Government without it. But if there were at first a Government without being beholden to the People for their Consent, as all men confess there was, I find no reason but that there may be so still, without asking Leave of the Multitude.

If it be true, that men are by nature free-born, and not to be governed without their own Consents, and that Self-preservation is to be regarded in the first place, it is not lawful for any Government but *Self-government* to be in the World, it were sin in the People to Desire, or attempt to Consent to any other Government: if the Fa-
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thers will promise for themselves to be Slaves, yet for their Children they cannot, who have alwayes the same Right to set themselves at Liberty, which their Fathers had to Enslave themselves.

To pretend that a major part, or the silent Consent of any part, may be interpreted to bind the whole People, is both unreasonable and unnatural; it is against all Reason for men to bind others, where it is against Nature for men to bind themselves. Men that boast so much of natural Freedom, are not willing to consider how contradictory and destructive the Power of a major part is to the natural Liberty of the whole People; the two grand Favourites of the Subjects, *Liberty* and *Property* (for which most men pretend to strive) are as contrary as Fire to Water, and cannot stand together. Though by humane Laws in *Voluntary Actions*, a major part may be tolerated to bind the whole Multitude, yet in *Necessary Actions*, such as those of Nature are, it cannot be so. Besides, if it were possible for a whole People to choose their Representatives, then either every, each one of those Representatives ought to be particularly chosen by the whole People, and not one Representative by one part, and another Representative by another part of the People, or else it is necessary, that continually the entire Number of the Representatives be present, because otherwise the whole People is never represented.

Again, it is impossible for the People, though they might and would choose a Government, or Governours, ever to be able to do it: for the People, to speak truly and properly, is a thing or Body
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in continual Alteration and Change, it never continues one Minute the same, being composed of a Multitude of Parts, whereof divers continually decay and perish, and others renew and succeed in their places; they which are the People this Minute, are not the People the next Minute. If it be answered, that it is impossible to stand so strictly, as to have the Consent of the whole People; and therefore that which cannot be, must be supposed to be the Act of the whole People: This is a strange Answer, first to affirm a Necessity of having the Peoples Consent, than to confess an Impossibility of having it. If but once that Liberty, which is esteemed so sacred, be broken, or taken away but from one of the meanest or basest of all the People; a wide Gap is thereby opened for any Multitude whatsoever, that is able to call themselves, or whomsoever they please, the People.

Howsoever men are naturally willing to be persuaded, that all Sovereignty flows from the Consent of the People, and that without it no true Title can be made to any Supremacy; and that it is so *currant an Axiome of late*, that it will certainly pass without Contradiction as a late Exercitator tells us: yet there are many and great Difficulties in the Point never yet determined, not so much as disputed, all which the Exercitator waves and declines, professing he will not insist upon the Distinctions, touching the manner of the Peoples passing their Consent, nor determine which of them is sufficient, and which not to make the Right or Title; whether it must be Antecedent to Possession, or may be consequent: Express, or Tacite: Collective, or Representative: Absolute, or conditioned: Free, or Inforced: Revocable, or Ir-

revocable. All these are material Doubts concerning the Peoples Title, and though the *Exercitator* will not himself determine what Consent is sufficient, and what not, to make a Right or Title, yet he might have been so courteous, as to have directed us, to whom we might go for Resolution in these Cases. But the Truth is, that amongst all them that plead the Necessity of the Consent of the People, not one of them hath ever toucht upon these so necessary Doctrines; it is a Task it seems too difficult, otherwise surely it would not have been neglected, considering how necessary it is to resolve the Conscience, touching the manner of the Peoples passing their Consent; and what is sufficient, and what not, to make, or derive a Right, or Title from the People.

No Multitude or great Assembly of any Nation, though they be all of them never so good and virtuous, can possibly govern; this may be evidently discovered by considering the Actions of great and numerous Assemblies, how they are necessitated to relinquish that supreme Power, which they think they exercise, and to delegate it to a few. There are two Parts of the Supreme Power, the *legislative*, and the *Executive*, neither of these can a great Assembly truly act. If a new Law be to be made it may in the General receive the Proposal of it from one or more of the General Assembly, but the forming, penning, or framing it into a Law is committed to a few, because a great number of persons cannot without tedious, and dilatory Debates, examine the Benefits and Mischiefs of a Law. Thus in the very first Beginning the Intention of a general Assembly is frustrated; then after a Law is
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penned or framed, when it comes to be questioned, whether it shall pass or nay; though it be Voted in a full Assembly, yet by the Rules of the Assembly, they are all so tyed up, and barred from a free and full Debate; that when any man hath given the Reasons of his Opinion; if those Reasons be argued against, he is not permitted to reply in Justification or Explanation of them, but when he hath once spoken, he must be heard no more: which is a main Denial of that Freedom of Debate, for which the great Assembly is alleged to be ordained in the high Point of *Legislative Power*.

The same may be said, touching the *executive Power*; if a cause be brought before a great Assembly, the first thing done, is to refer, or commit it to some few of the Assembly, who are trusted with the examining the Proofs, and Witnesses, and to make Report to the general Assembly; who upon the Report proceed to give their Judgments without any publick hearing, or interrogating the Witnesses, upon whose Testimonies diligently examined every man that will pass a conscientious judgment is to rely. Thus the *legislative* and *executive Power* are never truly practised in a great Assembly; the true Reason whereof is, if Freedom be given to Debate, never any thing could be agreed upon without endless Disputes; meer Necessity compels to refer main Transactions of Business to particular Congregations and Committees.

Those Governments that seem to be popular are kinds of petty *Monarchies*, which may thus appear: Government is a Relation between the Governours, and the governed, the one cannot be without

out the other, *mutuò se ponunt & auferunt*; where a Command or Law proceeds from a major part, there those individual Persons that concurred in the Vote, are the Governours, because the Law is only their Will in particular: the Power of a major Part being a contingent, or casual thing, expires in the very Act it self of voting, which Power of a major part is grounded upon a Supposition, that they are the stronger part; when the Vote is past, these Voters, which are the major part, return again, and are incorporated into the whole Assembly, and are buried as it were in that Lump, and no otherwise considered; the Act or Law ordained by such a Vote, loseth the Makers of it, before it comes to be obeyed; for when it comes to be put in Execution, it becomes the Will of those who enjoyn it, and force Obedience to it, not by Virtue of any Power derived from the Makers of the Law. No man can say, that during the Reign of the late Queen *Elizabeth*, that King *Henry* the 8th. or *Edward* the sixth did govern, although that many of the Laws that were made in those two former Princes times, were observed, and executed under her Government; but those Laws, though made by her Predecessours, yet became the Laws of her present Government; who willed and commanded the Execution of them, and had the same Power to correct, interpret, or mitigate them, which the first makers of them had; every Law must always have some present known Person in Being, whose Will it must be to make it a Law for the Present; this cannot be said of the major part of any Assembly, because that major part instantly ceaseth, as

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soon as ever it hath voted : an infallible Argument whereof is this, that the same major part after the Vote given, hath no Power to correct, alter, or mitigate it, or to Cause it to be put in Execution ; so that he that shall act, or cause that Law to be executed, makes himself the Commander, or willer of it, which was originally the Will of others : It is said by Mr. *Hibbs* in his *Leviathan* page 141. *nothing is Law, where the Legislator cannot be known; for there must be manifest Signs, that it proceedeth from the Will of the Sovereign; there is requisite, not only a Declaration of the Law, but also sufficient Signs of the Author and the Authority.*

That Senate or great Council, wherein it is conceived the supreme, or legislative Power doth rest, consists of those Persons who are actually Subjects at the very same time, wherein they exercise their legislative Power, and at the same Instant may be guilty of breaking one Law, whilst they are making another Law ; for it is not the whole and entire Will of every particular Person in the Assembly, but that part onely of his Will, which accidentally falls out to concur with the Will of the greater part : So that the Sharers of the legislative Power have each of them, perhaps not a hundreth part of the legislative Power (which in it self is indivisible) and that not in *Act*, but in *Possibility*, only in one particular Point for that Moment, whilst they give their Vote. To close this Point which may seem strange and new to some, I will produce the Judgment of *Bodin*, in his sixth Book of a *Commonweal*, and the fourth Chapter ; his words are, *The chief Point of a Commonweal, which is the Right of Sovereignty, cannot be, nor insist, to speak properly,*
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but in Monarchy; for none can be Sovereign in a Commonwealth, but one alone; if they be two or three or more, No one is Sovereign, for that no one of them can give or take a Law from his Companion: and although we imagine a Body of many Lords, or of a whole People to hold the Sovereignty, yet hath it no true Ground nor Support, if there be not a Head with absolute Power to unite them together, which a simple Magistrate without Sovereign Authority cannot do. And if it chance that the Lords, or Tribes of the People be divided (as it often falls out) then must they fall to Arms one against another: and although the greatest part be of one Opinion, yet may it so happen, as the lesser part, having many Legions, and making a Head, may oppose it self against the greater Number, and get the Victory. We see the Difficulties which are, and always have been in popular Estates, whereas they hold contrary Parts and for divers Magistrates, some demand Peace, others War; some will have this Law, others that; some will have one Commander, others another; some will treat a League with the King of France, others with the King of Spain, corrupted or drawn, some one Way, some another, making open War, as hath been seen in our Age amongst the Gens &c.

Upon these Texts of Aristotle forecited, and from the Mutability of the Roman Popularity, which Aristotle lived not to see, I leave the Learned to consider, whether it be not probable that these, or the like Paradoxes may be inferred to be the plain Mind of Aristotle, viz. 1. That there is no Form of Government, but Monarchy only. 2. That there is no Monarchy, but Pa-

64 Observations touching Forms &c.

ternal. 3. That there is no Paternal Monarchy, but Absolute, or Arbitrary. 4. That there is no such thing as an Aristocratie or Democratie. 5. That there is no such Form of Government as a Tyranny. 6. That the People are not born Free by Nature.

DIRECTI-



DIRECTIONS

F O R

Obedience to Government

I N

Dangerous or Doubtful Times.

ALL those who so eagerly strive for an original Power to be in the People, do with one Consent acknowledge, that originally the Supreme Power was in the Fatherhood ; and that the first Kings were Fathers of Families : This is not only evident, and affirmed by *Aristotle* ; but yielded unto by *Grotius*, Mr. *Selden*, Mr. *Hobbs*, Mr. *Ascam* ; and all others of that Party, not one excepted, that I know of.

Now for those that confess an original Subjection in Children, to be governed by their Parents, to dream of an original Free-

dom in Mankind, is to contradict themselves; and to make Subjects to be Free, and Kings to be Limited; to imagine such Passions and Contracts between Kings and People, as cannot be proved ever to have been made, or can ever be described or fancied, how it is possible for such Contracts ever to have been, is a boldness to be wondered at.

Mr. Selden confesseth, that *Adam, by donation from God, was made the general Lord of all things, not without such a private Dominion to himself, as (without his Grant) did exclude his Children. And by Donation, or Assignation, or some kind of Concession (before he was dead, or left any Heir to succeed him) his Children had their distinct Territories, by Right of Private Dominion. Abel had his Flocks, and Pastures for them: Cain had his Fields for Corn, and the Land of Nod, where he built himself a City.*

It is confessed, that in the Infancy of the World, the Paternal Government was Monarchical; but when the World was replenished with multitude of people, then the Paternal Government ceased, and was lost; and an Elective kind of Government by the People, was brought into the World. To this it may be answered, That the paternal Power cannot be lost; it may either
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be transferr'd or usurped ; but never lost, or ceaseth. God, who is the giver of Power, may transferr it from the Father to some other ; he gave to *Saul* a Fatherly power over his Father *Kish*. God also hath given to the Father a Right or Liberty to alien his Power over his Children, to any other ; whence we find the Sale and gift of Children, to have been much in Use in the beginning of the World, when men had their Servants for a possession and an Inheritance as well as other Goods ; whereupon we find the power of Castrating, and making Eunuchs much in Use in old times. As the power of the Father may be lawfully transferr'd or aliened, so it may be unjustly usurped : And in Usurpation, the Title of an Usurper is before, and better than the Title of any other than of him that had a former Right : for he hath a possession by the permissive Will of God, which permission, how long it may endure, no man ordinarily knows. Every man is to preserve his own Life for the Service of God, and of his King or Father, and is so far to obey an Usurper, as may tend not only to the preservation of his King and Father, but sometimes even to the preservation of the Usurper himself, when probably he may thereby be reserved to the Cor-

rection, or Mercy of his true Superiour; though by Humane Laws, a long Prescription may take away Right, yet Divine Right never dies, nor can be lost, or taken away.

Every man that is born, is so far from being Free-born, that by his very Birth he becomes a Subject to him that begets him: under which Subjection he is always to live, unless by immediate Appointment from God, or by the Grant or Death of his Father, he become possessed of that power to which he was subject.

The Right of Fatherly Government was ordained by God, for the preservation of Mankind; if it be usurped, the Usurper may be so far obeyed, as may tend to the preservation of the Subjects, who may thereby be enabled to perform their Duty to their true and right Sovereign, when time shall serve: in such Cases to obey an Usurper, is properly to obey the first and right Governour, who must be presumed to desire the Safety of his Subjects: the Command of an Usurper is not to be obeyed in any thing tending to the destruction of the Person of the Governour, whose Being in the first place is to be looked after.

It hath been said, that there have been
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so many Usurpations by Conquest in all Kingdoms, that all Kings are Usurpers, or the Heirs or Successors of Usurpers; and therefore any Usurper, if he can but get the possession of a Kingdom, hath as good a Title as any other.

Answer. The first Usurper hath the best Title, being, as was said, in possession by the Permission of God; and where an Usurper hath continued so long, that the knowledge of the right Heir be lost by all the Subjects, in such a case an Usurper in possession is to be taken and reputed by such Subjects for the true Heir, and is to be obeyed by them as their Father. As no man hath an infallible Certitude, but only a moral Knowledge, which is no other than a probable perswasion grounded upon a peaceable possession, which is a warrant for subjection to Parents and Governours; for we may not say, because Children have no infallible, or necessary certainty who are their true Parents, that therefore they need not obey, because they are uncertain: it is sufficient, and as much as Humane Nature is capable of, for Children to rely upon a credible perswasion; for otherwise the Commandement of *Honour thy Father*, would be a vain Commandment, and not possible to be observed.

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By Humane positive Laws, a Possession time out of mind takes away, or bars a former Right, to avoid a general Mischief, of bringing all Right into a disputation not decideable by proof, and consequently to the overthrow of all Civil Government, in Grants, Gifts, and Contracts, between man and man: But in Grants and Gifts that have their original from God or Nature, as the Power of the Father hath, no Inferiour power of man can limit, nor make any Law of Prescription against them: upon this ground is built that common Maxim, that *Nullum tempus occurrit regi*, No time bars a King.

All Power on Earth is either *derived* or *usurped* from the Fatherly power, there being no other original to be found of any Power whatsoever; for if there should be granted two sorts of power without any subordination of one to the other, they would be in perpetual strife which should be Supreme, for two Supremes cannot agree; if the Fatherly power be supreme, then the power of the People must be subordinate, and depend on it; if the power of the People be supreme, then the Fatherly power must submit to it, and cannot be exercised without the Licence of the People, which must quite destroy the frame
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and course of Nature. Even the Power which God himself exerciseth over Mankind is by Right of Fatherhood; he is both the King and Father of us all; as God hath exalted the Dignity of Earthly Kings, by communicating to them his own Title, by saying *they are gods*; so on the other side, he hath been pleased as it were to humble himself, by assuming the Title of a King, to express his Power, and not the Title of any popular Government; we find it is a punishment to have *no King*, Hosea, *ch.* 3. 4. and promised, as a Blessing to *Abraham*, Gen. 17. 6. *that Kings shall come out of thee.*

Every man hath a part or share in the preservation of Mankind in general, he that usurps the Power of a Superiour, thereby puts upon himself a Necessity of acting the Duty of a Superiour in the Preservation of them over whom he hath usurped, unless he will aggravate one heinous Crime, by committing another more horrid; he that takes upon him the Power of a superiour sins sufficiently, and to the Purpose: but he that proceeds to destroy both his Superiour, and those under the Superiours Protection, goeth a Strain higher, by adding Murther to Robbery; if Government be hindered, mankind perisheth, an
Usurper

Usurper by hindering the Government of another, brings a Necessity upon himself to govern, his Duty before Usurpation was only to be ministerial, or instrumental in the preservation of others by his Obedience; but when he denies his own, and hinders the Obedience of others, he doth not only not help, but is the Cause of the Distraction in hindering his Superiour to perform his Duty, he makes the Duty his own: if a Superiour cannot protect, it is his part to desire to be able to do it, which he cannot do in the Future if in the present they be destroyed for want of Government: therefore it is to be presumed, that the Superiour desires the preservation of them that should be subject to him; and so likewise it may be presumed, that an Usurper in general doth the Will of his Superiour, by preserving the People by Government, and it is not improper to say, that in obeying an Usurper, we may obey primarily the true Superiour, so long as our Obedience aims at the preservation of those in Subjection, and not at the Destruction of the true Governour. Not only the Usurper, but those also over whom Power is usurped, may joyn in the preservation of themselves, yea, and in the preservation sometimes of the Usurper himself:

Thus

Thus there may be a conditional Duty, or Right in an Usurper to govern; that is to say, supposing him to be so wicked as to usurp, and not willing to surrender or forego his Usurpation, he is then bound to protect by Government, or else he encreaseth, and multiplyeth his Sin.

Though an Usurper can never gain a Right from the true Superiour, yet from those that are Subjects he may; for if they know no other that hath a better Title than the Usurper, then as to them the Usurper in Possession hath a true Right.

Such a qualified Right is found at first in all Usurpers, as is in Theives who have stolen Goods, and during the time they are possessed of them, have a Title in Law against all others but the true Owners, and such Usurpers to divers Intents and Purposes may be obeyed.

Neither is he only an Usurper who obtains the Government, but all they are Partakers in the Usurpation, who have either failed to give Assistance to their lawful Sovereign, or have given Aid either by their Persons, Estates or Counsels for the Destroying of that Governour, under whose Protection they have been born and preserved; for although it should be granted, that *Protection* and *Subjection* are
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reciprocal, so that where the first fails, the latter ceaseth; yet it must be remembered, that where a man hath been born under the Protection of a long and peaceable Government, he owes an Assistance for the preservation of that Government that hath protected him, and is the Author of his own Disobedience.

It is said by some, that an usurped Power may be obeyed in things that are lawful: but it may not be obeyed not only in lawful things, but also in things indifferent: Obedience in things indifferent, is necessary; not indifferent. For in things necessarily good God is immediately obeyed, Superiours only by Consequence: If men command things evil, Obedience is due only by *tolerating* what they inflict: not by *performing* what they require: in the first they declare what God commands to be *done*, in the latter what to be *suffered*, so it remains, that things indifferent only are the proper Object of humane Laws. Actions are to be considered *simply* and alone, and so are good as being Motions depending on the first Mover; or *jointly* with Circumstances: And that in a double Manner. 1. In Regard of the *Ability* or *Possibility* whilst they may be done. 2. In the *Act* when they be performed: Before they be
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done they be indifferent, but once breaking out into Act, they become distinctly Good or Evil according to the Circumstances which determine the same. Now an Action commanded, is supposed as not yet done (whereupon the Hebrews call the Imperative Mood the first Future) and so remaineth many times indifferent.

Some may be of Opinion, that if Obedience may be given to an Usurper in things indifferent, as well as to a lawful Power; that then there is as much Obedience due to an usurped Power, as to a lawful. But it is a Mistake; for though it be granted that in things indifferent, an Usurper may be obeyed, as well as a lawful Governour; yet herein lyeth a main Difference, that some things are indifferent for a lawful Superiour, which are not indifferent, but unlawful to an Usurper to enjoyn. Usurpation is the resisting, and taking away the Power from him, who hath such a former Right to govern the Usurper, as cannot lawfully be taken away: so that it cannot be just for an Usurper, to take Advantage of his own unlawful Act, or create himself a Title by continuation of his own Injustice, which aggravates, and never extenuates his Crime: and if it never can be an Act indifferent for the Usurper himself to disobey his Lawful

ful Sovereign, much less can it be indifferent for him to command another to do that to which he hath no Right himself. It is only then a matter indifferent for an Usurper to command, when the Actions enjoined are such; as the lawful Superiour is commanded by the Law of God, to provide for the benefit of his Subjects, by the same, or other like Restriction of such indifferent things; and it is to be presumed, if he had not been hindred, would have commanded the same, or the like Laws.

OBSER-

OBSERVATIONS

Concerning the
Original of Government,

Upon { Mr. HOBS *his Leviathan.*
Mr. MILTON against *Salmasius.*
H. GROTIUS *De Jure Belli.*
Mr. HUNTON'S *Treatise of Monarchy.*

Arist. Pol. Lib. 4.

Ἡ πρώτη πολιτεία ἐν ταῖς Ἑλλησιν ἐχρῆτο μὲν ταῖς
βασιλείαις ὅκ τ' πολεμούντων.

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THE PREFACE.

WITH *no small Content* I read Mr. Hobs's Book *De Cive*; and his *Leviathan*, about the Rights of Sovereignty, which no man, that I know, hath so amply and judiciously handled: I consent with him about the Rights of exercising Government, but I cannot agree to his means of acquiring it. It may seem strange I should praise his Building, and yet mislike his Foundation; but so it is, his *Jus Naturæ*, and his *Regnum Institutivum*; will not down with me: they appear full of Contradiction and Impossibilities; a few short Notes about them, I here offer, wishing he would consider, whether his Building would not stand firmer upon the Principles of *Regnum Patrimoniale* (as he calls it) both according to Scripture and Reason. Since he confesseth, the Father, being before the institution of a Commonwealth, was Originally an Absolute Sovereign, with power of Life

The Preface.

and Death, and that a great Family, as to the Rights of Sovereignty, is a little Monarchy. If, according to the order of Nature, he had handled Paternal Government before that by Institution, there would have been little liberty left in the Subjects of the Family to consent to Institution of Government.

In his pleading the Cause of the People, he arms them with a very large Commission of Array; which is, a Right in Nature for every Man, to war against every Man when he please: and also a Right for all the People to govern. This latter Point, although he affirm in Words, yet by Consequence he denies, as to me it seemeth.

He saith, a Representative may be of All; or but of a Part of the People. If it be of All, he terms it a Democratic, which is the Government of the People. But how can such a Commonwealth be generated? for if every man Covenant with every man, who shall be left to be the Representative? if All must be Representatives, who will remain to Covenant? for he that is Sovereign makes no Covenant by his Doctrine. It is not All that will come together, that makes the Democratic, but All that have power by Covenant; thus his Democratic by Institution fails.

The same may be said of a Democratic by acquisition; for if all be Conquerours, who shall

The Preface.

shall Covenant for Life and Liberty? and if all be not Conquerours, how can it be a Democratic by Conquest?

A Paternal Democratic I am confident he will not affirm; so that in conclusion the poor People are deprived of their Government, if there can be no Democratic, by his Principles.

Next, If a Representative Aristocratical of a Part of the People be free from Covenanting, then that whole Assembly (call it what you will) though it be never so great, is in the state of Nature, and every one of that Assembly hath a Right not only to kill any of the Subjects that they meet with in the streets, but also they all have a natural Right to cut one anothers throats, even while they sit together in Council, by his Principles. In this miserable condition of War is his Representative Aristocratical by Institution.

A Commonwealth by Conquest, he teacheth, is then acquired, when the Vanquished, to avoid present Death, Covenanteth, that so long as his Life, and the liberty of his Body is allowed him, the Victor shall have the Use of it at his pleasure. Here I would know how the Liberty of the Vanquished can be allowed, if the Victor have the Use of it at pleasure, or how it is possible for the Victor to perform his Covenant, except he could alwayes stand by eve-

The Preface.

ry particular man to protect his Life and Liberty?

In his Review and Conclusion he resolves, that an ordinary Subject hath liberty to submit, when the means of his Life is within the Guards and Garisons of the Enemy. It seems hereby that the Rights of Sovereignty by Institution may be forfeited, for the Subject cannot be at liberty to submit to a Conquerour, except his former Subjection be forfeited for want of Protection.

If his Conquerour be in the state of nature when he conquers, he hath a Right without any Covenant made with the conquered; If Conquest be defined to be the acquiring of Right of Sovereignty by Victory, why is it said, the Right is acquired in the Peoples Submission, by which they contract with the Victor, promising Obedience for Life and Liberty? hath not every one in the state of Nature a Right to Sovereignty before Conquest, which onely puts him in possession of his Right?

If his Conquerour be not in the state of Nature, but a Subject by Covenant, how can he get a Right of Sovereignty by Conquest, when neither he himself hath Right to Conquer, nor Subjects a liberty to Submit? since a former Contract lawfully made, cannot lawfully be broken by them.

The Preface.

I wish the Title of the Book had not been of a Common-Wealth, but of a Weal Publick, or Common-weal, which is the true word, Carefully observed by our Translator of Bodin de Republica into English: Many ignorant men are apt by the Name of Commonwealth to understand a Popular Government, wherein Wealth and all things shall be Common, tending to the Levelling Community in the state of pure Nature.

OBSER.



OBSERVATIONS

O N

Mr. *HOBBS's* *LEVIATHAN* :

OR, HIS

ARTIFICIAL MAN

A Commonwealth.

I.

IF God created only *Adam*, and of a Piece of him made the Woman; and if by Generation from them two, as parts of them, all Mankind be propagated: If also God gave to *Adam* not only the Dominion over the Woman and the Children that should issue from them, but also over the whole Earth to subdue it, and over all the Creatures on it, so that as long as *Adam* lived no man could claim or enjoy any thing but by Donation, Assignment, or Permission from him; I wonder how the *Right of Nature* can be imagined by Mr. *Hobs*, which he saith pag. 64. is, a *Liberty for each man to use his own Power as he will himself for Preservation of his own Life; a Condition of War of every one against every one; a Right of every man to every thing,*
even

even to one anothers Body, especially since himself affirms, pag. 178. that originally the Father of every man was also his Sovereign Lord, with Power over him of Life and Death.

II

Mr. *Hobs* confesseth and believes it was never generally so, that there was such a *jus naturæ*; and if not generally, then not at all, for one exception bars all if he mark it well; whereas he imagines such a *Right of Nature* may be now practised in *America*, he confesseth a Government there of Families, which Government how small or brutish soever (as he calls it) is sufficient to destroy his *jus naturale*.

III,

I cannot understand how this *Right of Nature* can be conceived without imagining a Company of men at the very first to have been all Created together without any Dependency one of another, or as *Mushrooms* (*fungorum more*) they all on a sudden were sprung out of the Earth without any Obligation one to another, as Mr. *Hobs's* words are in his Book *De Cive*, cap. 8. sect. 3. the Scripture teacheth us otherwise, that all men came by Succession, and Generation from one man: we must not deny the Truth of the History of the Creation,

IV.

It is not to be thought that God would create man in a Condition worse than any Beasts, as if he made men to no other End by Nature but to destroy
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one another; a Right for the Father to destroy or eat his Children, and for Children to do the like by their Parents, is worse than Canibals. *De civi, cap. 1.* This horrid Condition of pure Nature *sett. 10.* when Mr. Hobbs was charged with, his Refuge was to answer, *that no Son can be understood to be in this state of pure Nature*: which is all one with denying his own Principle, for if men be not free-born, it is not possible for him to assign and prove any other time for them to claim a Right of Nature to Liberty, if not at their Birth.

V.

But if it be allowed (which is yet most false) that a Company of men were at first without a common Power to keep them in Awe; I do not see why such a Condition must be called a *State of War of all men against all men*: indeed if such a Multitude of men should be created as the Earth could not well nourish, there might be Cause for men to destroy one another rather than perish for want of Food; but God was no such Niggard in the Creation, and there being Plenty of Sustenance and Room for all men, there is no Cause or Use of War till men be hindred in the Preservation of Life, so that there is no absolute Necessity of War in the State of pure Nature, it is the Right of Nature for every man to live in Peace, that so he may tend the Preservation of his life, which whilst he is in actual War he cannot do. War of it self as it is War preserves no mans Life, it only helps us to preserve and obtain the Means to live: if every man tend the Right of preserving Life, which may

may be done in Peace, there is no Cause of War.

VI.

But admit the State of Nature were the State of War; let us see what Help Mr. *Hobs* hath for it. It is a Principle of his, that *the Law of Nature is a Rule found out by Reason*, (I do think it is given by God) pag. 64. *forbidding a man to do that which is destructive to his Life, and to omit that by which he thinks it may be best preserved*: If the Right of Nature be a Liberty for a man to do any thing he thinks fit to preserve his Life, then in the first Place Nature must teach him that Life is to be preserved, and so consequently forbids to do that which may destroy or take away the means of life, or to omit that by which it may be preserved: and thus the *Rights of Nature* and *the Law of Nature* will be all one: for I think Mr. *Hobs* will not say the Right of Nature is a Liberty for man to destroy his own Life. The Law of Nature might better have been said to consist in a Command to preserve or not to omit the Means of preserving Life, than in a Prohibition to destroy, or to omit it.

VII.

Another Principle I meet with, pag. 65. *If other men will not lay down their Right as well as he, then there is no Reason for any to devest himself of his*: Hence it follows, that if all the men in the World do not agree, no Common-wealth can be established; it is a thing impossible for all the men in the World, every man with every man, to Covenant to lay down their Right. Nay it is not possible to be

be done in the smallest Kingdom, though all men should spend their whole Lives in nothing else but in running up and down to Covenant.

VIII.

Right may be laid aside but not transfer'd, for pag. 65. *he that renounceth or passeth away his Right, giveth not to any other man a Right which he had not before, and reserves a Right in himself against all those with whom he doth not Covenant.*

IX.

Pag. 87. *The only way to erect a Common Power or a Commonwealth; is for men to confer all their Power and Strength upon one man, or one Assembly of men, that may reduce all their Wills by Plurality of Voices to one Will; which is to appoint one man or an Assembly of men to bear their Person, to submit their Wills to his Will: this is a real Unity of them all in one Person, made by Covenant of every man with every man, as if every man should say to every man, I authorise, and give up my Right of Governing my self to this man, or this Assembly of men, on this Condition, that thou give up thy Right to him, and authorise all his Actions. This done, the Multitude so united in one Person, is called a Commonwealth.*

To authorise and give up his Right of Governing himself, to confer all his Power and Strength, and to submit his Will to another, is to lay down his Right of resisting: for if Right of Nature be a Liberty to use Power for Preservation of Life, laying down of that Power must be a Relinquishing of Power

et to preserve or defend Life, otherwise a man relinquisheth nothing.

To reduce all the Wills of an Assembly by Plurality of Voices to one Will, is not a proper Speech, for it is not a Plurality but a Totality of Voices which makes an Assembly be of one Will, otherwise it is but the one Will of a major part of the Assembly, the Negative Voice of any one hinders the Being of the one Will of the Assembly, there is nothing more destructive to the true Nature of a lawful Assembly, than to allow a major part to prevail when the whole only hath Right. For a man to give up his Right to one that never Covenants to protect, is a great Folly, since it is neither in Consideration of some Right reciprocally transferred to himself, nor can he hope for any other Good, by standing out of the way, that the other may enjoy his own original Right without hinderance from him by reason of so much Diminution of Impediments. pag. 66.

X.

The Liberty, saith Mr. Hobs, whereof there is so frequent and honourable Mention in the Histories and Philosophy of the ancient Greeks and Romans, and in the Writings and Discourse of those that from them have received all their Learning in the Politiques, is not the Liberty of particular men, but the Liberty of the Commonwealth. Whether a Commonwealth be Monarchical or Popular, the Freedom is still the same. Here I find Mr. Hobs is much mistaken: for the Liberty of the Athenians and Romans was a Liberty only to be found in popular Estates, and not in Monarchies. This is clear by Aristotle, who calls a City a Community of Freemen, meaning every particular Citizen to be free. Not that

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every particular man had a Liberty to resist his Governour, or do what he list, but a Liberty only for particular men, to Govern and to be governed by Turns, *αἴτιον* and *ἀρχή* are *Aristotles* words: this was a Liberty not to be found in hereditary Monarchies: so *Tacitus* mentioning the several Governments of *Rome*, joyns the Consulship and Liberty to be brought in by *Brutus*, because by the annual Election of Consuls, particular Citizens came in their Course to govern and to be governed. This may be confirmed by the Complain of our Author, which followeth: *It is an easie thing for men to be deceived by the specious name of Liberty: and for want of Judgment to distinguish, mistake that for their private Inheritance or Birth-right which is the Right of the Publick only: And when the same Error is confirmed by the Authority of men in Reputation for their Writings on this Subject, it is no wonder if it produce Sedition and Change of Government. In the Western parts of the World, we are made to receive our Opinions concerning the Institution and Right of Common-wealths from Aristotle and Cicero, and other men, Greeks and Romans, that living under popular Estates, derived those Rights not from the Principles of Nature, but transcribed them into their Books out of the Practice of their own Commonwealths, which were Popular. And because the Athenians were taught (to keep them from Desire of changing their Government) that they were Free-men, and all that lived under Monarchy, Slaves: therefore Aristotle puts it down in his Politiques. In Democracy Liberty is to be supposed, for it's commonly held that no man is free in any other Government. So Cicero and other Writers grounded their civil Doctrine on the Opinions of the Romans, who were taught to hate Monarchy, at first, by them*

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that having deposed their Sovereign, shared amongst them the Sovereignty of Rome. And by reading of these Greek and Latine Authors, men from their Childhood have gotten a Habit (under a false shew of Liberty,) of favouring Tumults, and of licentious controuling the Actions of their Sovereigns.

XI.

Pag. 102. Dominion paternal not attained by Generation, but by Contract, which is the Childs Consent, either express, or by other sufficient Arguments declared. How a Child can express Consent, or by other sufficient Arguments declare it before it comes to the Age of Discretion I understand not, yet all men grant it is due before Consent can be given; and I take it Mr. Hobs is of the same Mind, pag. 249. where he teacheth, that Abrahams Children were bound to obey what Abraham should declare to them for Gods Law: which they could not be but in Vertue of the Obedience they owed to their Parents; they owed, not they covenanted to give. Also where he saith pag. 121. the Father and Master being before the Institution of Commonweals absolute Sovereigns in their own Families, how can it be said that either Children or Servants were in the State of *jus nature* till the Institutions of Commonweals? It is said by Mr. Hobs, in his Book *De Cive*, cap. 9. Section 7. the Mother originally hath the Government of her Children, and from her the Father derives his Right, because she brings forth and first nourisheth them. But we know that God at the Creation gave the Sovereignty to the man over the Woman, as being the nobler and principal Agent

Agent in Generation. As to the Objection, that it is not known who is the Father to the Son, but by the discovery of the Mother, and that he is his Son whom the Mother will, and therefore he is the Mother's: The answer is, that it is not at the Will of the Mother to make whom she will the Father, for if the Mother be not in possession of a Husband, the Child is not reckoned to have any Father at all; but if she be in the possession of a man, the Child, notwithstanding whatsoever the Woman discovereth to the contrary, is still reputed to be his in whose possession she is. No Child naturally and infallibly knows who are his true Parents, yet he must obey those that in common reputation are so, otherwise the Commandement of *Honour thy Father and thy Mother* were in vain, and no Child bound to the obedience of it.

XII.

If the Government of one man, and the Government of two men, make two several kinds 94.
of Government, why may not the Government of two, and the Government of three do the like, and make a third? and so every differing Number a differing kind of Common-wealth. If an Assembly of all (as Mr. Hobbs saith) that will come together be a *Democratie*, and an Assembly of a part onely an *Aristocratie*, then if all that will come together be but a part onely, a *Democratie* and *Aristocratie* are all one; and why must an Assembly of part be called an *Aristocratie*, and not a *Merocratie*?

It seems Mr. Hobbs is of the mind that there is 87.
but one kind of Government, and that is Mo-

narchy, for he defines a *Commonwealth* to be one Person, and an Assembly of men, or real Unity of them all in one and the same Person, the multitude so united he calls a *Common-wealth*: This his Moulding of a Multitude into one Person, is the generation of his great *Leviathan*, the King of the Children of Pride, pag. 167. Thus he concludes the Person of a Commonwealth to be a Monarch.

XIII.

I cannot but wonder Master *Hobs* should say, Page 112. the Consent of a Subject to Sovereign Power is contained in these words, *I Authorise, and do take upon me all his Actions, in which there is no restriction at all of his own former natural Liberty*. Surely here Master *Hobs* forgot himself; for before he makes the Resignation to go in these words also, *I give up my Right of governing my self to this man*: This is a restriction certainly of his own former natural Liberty, when he gives it away: and if a man allow his Sovereign to kill him, which Mr. *Hobs* seems to confess, how can he reserve a Right to defend himself? And if a man have a Power and Right to kill himself, he doth not Authorise and give up his Right to his Sovereign, if he do not obey him when he commands him to kill himself.

XIV.

Mr. *Hobs* saith, pag. 112. *No man is bound by the words themselves of his Submission to kill himself, or any other man: and consequently that the Obligation a man may sometimes have upon the Command of the Sovereign*

veraign to execute any dangerous or dishonourable Office, dependeth not on the words of our Submission, but on the Intention, which is to be understood by the End thereof. When therefore our refusal to Obey frustrates the End for which the Sovereignty was Ordained, then there is no liberty to refuse: otherwise there is. If no man be bound by the words of his Subjection to kill any other man, then a Sovereign may be denied the benefit of War, and be rendred unable to defend his People, and so the End of Government frustrated. If the Obligation upon the Commands of a Sovereign to execute a dangerous or dishonourable Office, dependeth not on the words of our Submission, but on the Intention, which is to be understood by the End thereof; No man, by Mr. Hobs's Rules, is bound but by the words of his Submission; the Intention of the Command binds not, if the words do not: If the Intention should bind, it is necessary the Sovereign must discover it, and the People must dispute and judge it; which how well it may consist with the Rights of Sovereignty, Master Hobs may consider: Whereas Master Hobs saith, the *Intention is to be understood by the End*; I take it he means the End by Effect, for the End and the Intention are one and the same thing; and if he mean the Effect, the Obedience must go before, and not depend on the understanding of the Effect, which can never be, if the Obedience do not precede it: In fine, he resolves, refusal to obey may depend upon the judging of what frustrates the End of Sovereignty, and what not, of which he cannot mean any other Judge but the People.

XV.

Mr. Hobbs puts a case by way of Question. *A great many men together have already resisted the Sovereign Power unjustly, or committed some Capital Crime, for which every one of them expecteth death: whether have they not the liberty then to joyn together, and assist and defend one another? Certainly they have; for they but defend their Lives, which the Guilty man may as well do as the Innocent: There was indeed Injustice in the first breach of their Duty, their bearing of Arms subsequent to it, though it be to maintain what they have done, is no new unjust Act; and if it be only to defend their Persons, it is not Unjust at all. The only reason here alleged for the Bearing of Arms, is this; That there is no new unjust Act: as if the beginning only of a Rebellion were an unjust Act, and the continuance of it none at all. No better Answer can be given to this case, than what the Author himself hath delivered in the beginning of the same Paragraph, in these words; To resist the Sword of the Commonwealth in defence of another man, Guilty or Innocent, no man hath liberty: because such Liberty takes away from the Sovereign the Means of protecting us, and is therefore destructive of the very Essence of Government. Thus he first answers the question, and then afterwards makes it, and gives it a contrary Answer: other Passages I meet with to the like purpose. He saith, Page 66. *A man cannot lay down the Right of Resisting them that Assault him by Force to take away his Life: The same may be said of Wounds, Chains, and Imprisonment.**

Page

Page 69. *A Covenant to defend my self from Force by Force, is void.* Pag. 68. *Right of Defending Life and Means of living, can never be abandoned.*

These last Doctrines are destructive to all Government whatsoever, and even to the *Leviathan* it self : hereby any Rogue or Villain may murder his Sovereign, if the Sovereign but offer by force to whip or lay him in the Stocks, since Whipping may be said to be wounding, and Putting in the Stocks an Imprisonment : so likewise every mans Goods being a Means of Living, if a man cannot abandon them, no Contract among men, be it never so just, can be observed : thus we are at least in as miserable condition of War, as Mr. *Hobbs* at first by Nature found us.

XVI.

The Kingdom of God signifies, (saith Master Hobbs, page 216.) a Kingdom constituted by the Votes of the People of Israel in a peculiar manner, wherein they choose God for their King, by Covenant made with him, upon God's promising them Canaan. If we look upon Master *Hobbs*'s Text for this, it will be found that the People did not Constitute by Votes, and choose God for their King ; But by the Appointment first of God himself, the Covenant was to be a God to them : they did not contract with God, that if he would give them *Canaan*, they would be his Subjects, and he should be their King ; It was not in their power to choose whether God should be their God, yea, or nay : for it is confessed, *He reigned naturally over all by his Might.* If God Reigned naturally, he had a Kingdom,

and Sovereign Power over his Subjects, not acquired by their own Consent. This Kingdom, said to be constituted by the Votes of the People of *Israel*, is but the Vote of *Abraham* only; his single Voyce carried it; he was the Representative of the People. For at this Vote, it is confessed, that the Name of *King* is not given to God, nor of *Kingdom* to *Abraham*; yet the thing, if we will believe *Master Hubs*, is all one. If a Contract be the mutual transferring of Right, I would know what Right a People can have to transferr to God by Contract. Had the People of *Israel* at Mount *Sinai* a Right not to obey God's Voice? If they had not such a Right, what had they to transferr?

The Covenant mentioned at Mount *Sinai* was but a Conditional Contract, and God but a Conditional King; and though the People promised to obey Gods word, yet it was more than they were able to perform, for they often disobeyed Gods Voice, which being a breach of the Condition, the Covenant was void, and God not their King by Contract.

It is complained by God, *They have rejected me that I should reign over them*: but it is not said, according to their Contract; for I do not find that the Desiring of a King was a breach of their Contract of Covenant, or disobedience to the Voice of God: there is no such Law extant.

The People did not totally reject the Lord, but in part onely, out of timorousness, when they saw *Nabash* King of the Children of *Ammon* come against them; they distrusted that God would not suddenly provide for their Deliverance, as if they had had alwayes a King in readines to go up presently

sently to fight for them: This Despair in them who had found so many miraculous deliverances under Gods Government, was that which offended the Lord so highly: they did not desire an Alteration of Government, and to cast off Gods Laws, but hoped for a certainer and speedier deliverance from danger in time of War. They did not petition that they might choose their King themselves, that had been a greater sin; and yet if they had, it had not been a total rejection of Gods Reigning over them, as long as they desired not to depart from the Worship of God their King, and from the Obedience of his Laws. I see not that the Kingdom of God was cast off by the Election of *Saul*, since *Saul* was chosen by God himself, and governed according to Gods Laws. The Government from *Abraham* to *Saul* is no where called the Kingdom of God, nor is it said, that the Kingdom of God was cast off at the Election of *Saul*.

Mr. Hobs allows, that *Moses* alone had, next under God, the Sovereignty over the Israelites, p. 252. but he doth not allow it to *Joshua*, but will have it descend to *Eleazar* the High-Priest, *Aaron's* son. His Proof is, God expressly saith concerning *Joshua*, *He shall stand before Eleazar, who shall ask Counsel for him before the Lord*, (after the judgment of *Urim*, is omitted by Mr. Hobs) *at his word they shall go out*, &c. therefore the Supreme Power of making Peace and War was in the Priest: Answ. The Work of the High-Priest was onely Ministerial, not Magisterial; he had no power to Command in War, or to Judge in Peace; onely when the Sovereign or Governour did go up to

War, he enquired of the Lord by the Ministry of the High Priest, and, as the *Hebrews* say, the Enquirer with a soft voice, as one that prayeth for himself, asked : and forthwith the Holy Ghost came upon the Priest, and he beheld the Brest-plate, and saw therein by the Vision of Prophecy, *Go up*, or *go not up*, in the letters that shewed forth themselves upon the Brest-plate before his face : then the Priest answered him, *Go up*, or *Go not up*. If this Answer gave the Priest Sovereignty, then neither King *Saul* nor King *David* had the Sovereignty, who both asked Counsel of the Lord by the Priest.

OBSER.

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OBSERVATIONS ON

Mr. Milton

Against

S A L M A S I U S.

I.

AMong the many Printed Books, and several Discourses touching the Right of *Kings*, and the Liberty of the *People*, I cannot find that as yet the first and chief Point is agreed upon, or indeed so much as once disputed. The word *King* and the word *People* are familiar, one would think every simple man could tell what they signified ; but upon Examination it will be found, that the learnedst cannot agree of their Meaning.

Ask *Salmasius* what a King is, and he will teach us, that *a King is he who hath the Supreme Power of*
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the Kingdom, and is accountable to none but God, and may do what he please, and is free from the Laws. This Definition *J. M.* abominates as being the Definition of a Tyrant: And I should be of his Mind, if he would have vouchsafed us a better, or any other Definition at all, that would tell us how any King can have a Supreme Power, without being freed from humane Laws: To find fault with it, without producing any other, is to leave us in the Dark: but though *Mr. Milton* brings us neither Definition nor Description of a King, yet we may pick out of several Passages of him, something like a Definition, if we lay them together. He teacheth us that *Power was therefore given to a King by the People, that he might see by the Authority to him committed, that nothing be done against Law: and that he keeps our Laws, and not impose upon us his own: Therefore there is no Regal Power but in the Courts of the Kingdom, and by them,* pag. 155.

And again he affirmeth, *the King cannot Imprison, Fine or punish any man, except he be first cited into some Court; where not the King, but the usual Judges give Sentence,* pag. 168. and before we are told, *not the King, but the Authority of Parliament doth set up and take away all Courts,* pag. 167.

Lo here the Description of a King, He is one to whom the People give Power, to see that nothing be done against Law: and yet he saith there is no Regal Power but in the Courts of Justice and by them, where not the King, but the usual Judges give Sentence. This Description not only strips the King of all Power whatsoever, but puts him in a Condition below the meanest of his Subjects.

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Thus much may shew, that all men are not agreed what a King is. Next, what the word *People* means is not agreed upon: ask *Aristotle* what the *People* is, and he will not allow any Power to be in any but in free Citizens. If we demand, who be free Citizens? That he cannot resolve us; for he confesseth that *he that is a free Citizen in one City, is not so in another City*. And he is of Opinion that *no Artificer should be a free Citizen, or have Voice in a well ordered Commonwealth*; he accounts a *Democratie* (which word signifies the Government of the *People*) to be a *corrupted sort of Government*; he thinks *many men by Nature born to be Servants, and not fit to govern as any part of the People*. Thus doth *Aristotle* curtail the *People*, and cannot give us any certain Rule to know who be the *People*: Come to our Modern Politicians, and ask them who the *People* is, though they talk big of the *People*, yet they take up, and are content with a *few Representors* (as they call them) *of the whole People*; a Point *Aristotle* was to seek in, neither are these Representors flood upon to be the whole *People*, but the *major part of these Representors must be reckoned for the whole People*; nay *J. M.* will not allow the major part of the Representors to be the *People*, but the *sounder and better part only* of them; and in right down terms he tells us pag. 126. *to determine who is a Tyrant, he leaves to Magistrates, at least to the uprighter sort of them and of the People, pag. 7. though in number less by many, to judge as they find cause*. If the *sounder, the better, and the uprighter Part* have the Power of the *People*, how shall we know, or who shall judge who they be?

II.

One Text is urged by Mr. Milton, for the Peoples Power: Deut. 17. 14. *When thou art come into the Land which thy Lord thy God giveth thee, and shalt say, I will set a King over me, like as all the Nations about me.* It is said, by the Tenure of Kings these words confirm us that the Right of Choosing, yea of Changing their own Government, is by the Grant of God himself in the People: But can the foretelling or forewarning of the Israelites of a wanton and wicked Desire of theirs, which God himself condemned, be made an Argument that God gave or granted them a Right to do such a wicked thing? or can the Narration and reproving of a Future Fact, be a Donation and approving of a present Right, or the Permission of a Sin be made a Commission for the doing of it? The Author of his Book against *Salmasius*, falls so far from making God the Donor or Grantor, that he cites him only for a Witness, *Teste ipso Deo penes populos arbitrium semper fuisse, vel ea, quæ placeret forma reipub. utendi, vel hanc in aliam mutandi; de Hebræis hoc discretè dicit Deus: de reliquis non abnuit.*

That here in this Text God himself being Witness, there was always a Power in the People, either to use what Form of Government they pleased, or of changing it into another: God saith this expressly of the Hebrews, and denies it not of others. Can any man find that God in this Text expressly saith, that there was always a Right in the People to use what Form of Government they please? The Text not warranting this Right of the People, the Foundation of the
Defence

Defence of the People is quite taken away ; there being no other Grant or proof of it pretended.

2. Where it is said, that *the Israelites desired a King, though then under another Form of Government ;* in the next line but one it is confessed, they had a King at the time when they desired a King, which was God himself, and his Vice-roy *Samuel*; and so saith God, *They have not rejected thee ; but they have rejected me, that I should not reign over them ;* yet in the next Verse God saith, *As they have forsaken me, so do they also unto thee.* Here is no Shew of any other Form of Government but Monarchy : God by the Mediation of *Samuel* reigned, who made his Sons Judges over *Israel* ; when one man constitutes Judges, we may call him a King ; or if the Having of Judges do alter the Government, then the Government of every Kingdom is altered from Monarchy, where Judges are appointed by Kings : it is now reckoned one of the Duties of Kings to judge by their Judges only.

Where it is said, *He shall not multiply to himself Horses, nor Wives, nor Riches, that he might understand that he had no Power over others, who could Decree nothing of himself, extra Legem ;* if it had said, *contra legem Dei*, it had been true, but if it meant *extra legem humanam*, it is false.

4. If there had been any Right given to the People, it seems it was to the Elders onely ; for it is said, it was the Elders of *Israel* gathered together, petitioned for a King ; it is not said, it was all the People, nor that the People did choose the Elders, who were the Fathers and Heads of Families, authorized by the Judges.

5. Where

5. Where it is said, *I will set a King over me like as all the Nations about me.* To set a King, is, not to choose a King, but by some solemn publick Act of Coronation, or otherwise to acknowledge their Allegiance to the King chosen; It is said, thou shalt set him King whom the Lord thy God shall choose. The Elders did not desire to choose a King like other Nations, but they say, *now make us a King to judge us like all the Nations.*

III.

As for *Dauids* Covenant with the Elders when he was annointed, it was not to observe any Laws or Conditions made by the People, for ought appears; but to keep Gods Laws and serve him, and to seek the Good of the People, as they were to protect him.

6. The *Reubenites* and *Gadites* promise their Obedience, not according to their Laws or Conditions agreed upon, but in these words *All that thou cammandest us we will do, and whithersoever thou sendst us we will go, as we harkened to Moses in all things, so will we harken unto thee: only the Lord thy God be with thee as he was with Moses.* Where is there any Condition of any humane Law expressed? Though the rebellious Tribes offered Conditions to *Rehoboam*; where can we find, that for like Conditions not performed, all *Israel* deposed *Samuel*? I wonder *Mr. Milton* should say this, when within a few Lines after he professeth, that *Samuel* bad governed them uprightly.

IV.

IV.

Jus Regni is much stumbled at, and the Definition of a King which saith *His Power is supreme in the Kingdom, and he is accountable to none but to God, and that he may do what he please, and is not bound by Laws*: it is said if this Definition be good, no man is or ever was, who may be said to be a Tyrant; p.14. for *when he hath violated all divine and humane Laws, nevertheless he is a King, and guiltless jure Regio*. To this may be answered, That the Definition confesseth he is accountable to God, and therefore not guiltless if he violate Divine Laws: Humane Laws must not be shuffled in with Divine, they are not of the same Authority: if humane Laws bind a King, it is impossible for him to have Supreme Power amongst men. If any man can find us out such a kind of Government, wherein the supreme Power can be, without being freed from humane Laws, they should first teach us that; but if all sorts of popular Government that can be invented, cannot be one Minute, without an Arbitrary Power, freed from all humane Laws: what reason can be given why a Royal Government should not have the like Freedom? if it be Tyranny for one man to govern arbitrarily, why should it not be far greater Tyranny for a multitude of men to govern without being accountable or bound by Laws? It would be further enquired how it is possible for any Government at all to be in the World without an arbitrary Power; it is not Power except it be arbitrary: a legislative Power cannot be without being absolved from humane Laws, it cannot be shewed how a
King

King can have any Power at all but an arbitrary Power. We are taught, that *Power was therefore given to a King by the People, that he might see by the Authority to him committed, that nothing be done against Law, and that he keep our Laws, and not impose upon us his own: therefore there is no Royal Power, but in the Courts of the Kingdom, and by them, pag. 155.* And again it is said, *the King cannot Imprison, Fine or Punish any man except he be first cited into some Court, where not the King but the usual Judges give Sentence, pag. 168.* and before, we are told, *not the King, but the Authority of Parliament doth set up and take away all Courts, pag. 167.*

Lo here we have Mr. Milton's perfect Definition of a King: He is one to whom the People gave Power to see that nothing be done against Law, and that he keep our Laws, and not impose his own. Whereas all other men have the Faculty of Seeing by Nature, the King only hath it by the Gift of the People, other Power he hath none; he may see the Judges keep the Laws if they will; he cannot compell them, for he may not Imprison, Fine, nor punish any man; the Courts of Justice may, and they are set up and put down by the Parliament: yet in this very Definition of a King, we may spy an arbitrary Power in the King; for he may wink if he will: and no other Power doth this Description of a King give, but only a Power to see: whereas it is said *Aristotle doth mention an absolute Kingdom, for no other Cause, but to shew how absurd, unjust and most tyrannical it is.* There is no such thing said by Aristotle, but the contrary, where he saith, that a King according to Law makes no sort of Government; and after he had reckoned up five sorts of Kings, he

con-

concludes, that there were in a manner but two sorts, the *Lacedemonian King*, and the *Absolute King*; whereof the first was but as General in an Army, and therefore no King at all, and then fixes and rests upon the *Absolute King*, who ruleth according to his own Will.

V.

If it be demanded what is meant by the word *People*? 1. Sometimes it is *Populus universus*, and then every Child must have his Consent asked, which is impossible. 2. Sometimes it is *pars major*, and sometimes it is *pars potior & sanior*; How the major part, where all are alike free, can bind the minor part, is not yet proved.

But it seems the major part will not carry it, nor be allowed, except they be the *better part*, and the *sounder part*. We are told, the *sounder part* implored the help of the Army, when it saw it self and the Commonwealth betrayed; and that the Souldiers judged better than the Great Council, and by Arms saved the Commonwealth, which the Great Council had almost damned by their Votes, p. 7.

Here we see what the *People* is; to wit, the *sounder part*; of which the Army is the judge: thus, upon the matter, the Souldiers are the *People*: which being so, we may discern where the Liberty of the *People* lieth, which we are taught to consist all for the most part in the power of the *Peoples Choosing what Form of Government they please* pag. 61. A miserable Liberty, which is openly to choose to whom we will give our Liberty, which we may not keep. See more concerning the *People*, in a Book entituled *The Anarchy*, p. 8, 9, 10, 11, 12, 13, 14.

VI.

We are taught, that a Father and a King are things most diverse. The Father begets us, but not the King; but we create the King: Nature gives a Father to the People, the People give themselves a King: If the Father kill his Son he loseth his life, why should not the King also? p. 34.

Ans. Father and King are not so diverse; it is confessed, that at first they were all one, for there is confessed *Paternum imperium & hereditarium*, p. 141. and this Fatherly Empire, as it was of it self hereditary, so it was alienable by Patent, and seizable by an Usurper, as other goods are: and thus every King that now is, hath a Paternal Empire, either by Inheritance, or by Translation, or Usurpation; so a Father and a King may be all one.

A Father may dye for the Murther of his Son, where there is a Superiour Father to them both, or the Right of such a Supreme Father; but where there are onely Father and Sons, no Sons can question the Father for the death of their Brother: the reason why a King cannot be punished, is not because he is excepted from Punishment, or doth not deserve it, but because there is no Superiour to judge him, but God onely, to whom he is reserved.

VII.

It is said thus, *He that takes away from the People the power of Choosing for themselves what Form of Government they please, he doth take away that wherein all Civil Liberty almost consists*, p. 65. If almost all Liberty

ty be in Choosing of the Kind of Government, the People have but a poor Bargain of it, who cannot exercise their Liberty, but in Chopping and Changing their Government, and have liberty onely to give away their Liberty, than which there is no greater mischief, as being the cause of endless Sedition.

VIII.

If there be any Statute in our Law, by which thou canst find that Tyrannical Power is given to a King, that Statute being contrary to Gods Will, to Nature and Reason, understand that by that general and primary Law of ours, that Statute is to be repealed, and not of force with us, p. 153. Here, if any man may be judge, what Law is contrary to Gods Will, or to Nature, or to Reason, it will soon bring in Confusion: Most men that offend, if they be to be punished or fined, will think that Statute that gives all Fines and Forfeitures to a King, to be a Tyrannical Law; thus most Statutes would be judged void, and all our Fore-fathers taken for Fools or Madmen, to make all our Laws to give all Penalties to the King.

IX.

The sin of the Children of *Israel* did lye, not in Desiring a King, but in desiring such a King like as the Nations round about had; they distrusted God Almighty, that governed them by the Monarchical Power of *Samuel*, in the time of oppression, when God provided a Judge for them; but they desired a perpetual and hereditary King, that they might never want: in Desiring a King they could not sin,

for it was but Desiring what they enjoyed by Gods special Providence.

X.

Men are perswaded, that in Making of a Covenant, something is to be performed on both parts by mutual Stipulation; which is not alwayes true: for we find God made a *Covenant with Noah and his Seed, with all the Fowl and the Cattel, not to destroy the Earth any more by a flood.* This Covenant was to be kept on Gods part, neither *Noah*, nor the Fowl, nor the Cattel were to perform any thing by this Covenant. On the other side, *Gen. 17. 9, 10.* God covenants with *Abraham*, saying, *Thou shalt keep my Covenant,---every male child among you shall be circumcised.* Here it is called Gods Covenant, though it be to be performed onely by *Abraham*; so a Covenant may be called the Kings Covenant, because it is made to him, and yet to be performed only by the People. So also, *2 Kin. 11. 17.* *Jehoiada made a Covenant between the Lord, and the King, and the People, that they should be the Lords People.* Between the King also and the People, which might well be, that the People should be the Kings Servants: and not for the King's covenanting to keep any Humane Laws, for it is not likely the King should either Covenant, or take any Oath to the People when he was but seven years of age, and that never any King of *Israel* took a Coronation-Oath that can be shewed: when *Jehoiada* shewed the King to the Rulers in the House of the Lord, he took an Oath of the People: he did not Article with them, but saith the next Verse, *Commanded them to keep a Watch of the Kings House, and that they should compass the King round about, ev-*

ry man with his weapon in his hand; and he that cometh within the Ranges, let him be slain.

XI.

To the Text, *Where the word of a King is, there is Power, and who may say unto him, What dost thou?* J. M. gives this Answer: It is apparent enough, that the Preacher in this place gives Precepts to every private man, not to the great Sanhedrin, nor to the Senate-- shall not the Nobles, shall not all the other Magistrates, shall not the whole People dare to mutter, so oft as the King pleaseth to dote? We must here note, that the great Council, and all other Magistrates or Nobles, or the whole People, compared to the King, are all but private men, if they derive their Power from him: they are Magistrates under him, and out of his Presence, for when he is in place, they are but so many private men. J. M. asks, *Who swears to a King, unless the King on the other side be sworn to keep Gods Laws, and the Laws of the Countrey?* We find that the Rulers of Israel took an Oath at the Coronation of Jeboash: but we find no Oath taken by that King, no not so much as to Gods Laws, much less to the Laws of the Countrey.

XII.

A Tyrant is he, who regarding neither Law nor the Common Good, reigns onely for himself and his Faction; p. 19. In his Defence he expresseth himself thus, *He is a Tyrant who looks after only his own, and not his Peoples profit,* Eth. l. 10. p. 189.

1. If it be Tyranny not to regard the Law, then all Courts of Equity, and Pardons for any Offences must be taken away : there are far more Sutes for relief against the Laws, than there be for the observation of the Laws: there can be no such Tyranny in the World as the Law, if there were no Equity to abate the rigour of it. *Summum Jus* is *Summa Injuria*; if the Penalties and Forfeitures of all Laws should still be exacted by all Kings, it would be found, that the greatest Tyranny would be, for a King to govern according to Law ; the Fines, Penalties, and Forfeitures of all Laws are due to the Supreme Power onely, and were they duely paid, they would far exceed the Taxes in all places. It is the chief happiness of a Kingdom, and their chief Liberty, not to be governed by the Laws Only.

2. *Not to regard the Common Good, but to reign only for himself*, is the supposition of an impossibility in the judgment of *Aristotle*, who teacheth us, that *the despotical Power cannot be preserved, except the Servant, or be in subjection, be also preserved*. The truth of this strongly proves, That it is in Nature impossible to have a Form of Government that can be for the destruction of a People, as Tyranny is supposed ; if we will allow People to be governed, we must grant, they must in the first place be preserved, or else they cannot be governed.

Kings have been, and may be vitious men, and the Government of one, not so good as the Government of another ; yet it doth not follow, that the Form of Government is, or can be in its own nature ill, because the Governour is so : it is Anarchy, or want of Government, that can totally destroy a Nation. We cannot find any such Government as Tyranny

ranny mentioned or named in Scripture, or any word in the Hebrew Tongue to exprefs it. After ſuch time as the Cities of Greece practiſed to ſhake off Monarchy, then, and not till then, (which was after *Homer's* time) the name of Tyrant was taken up for a word of Diſgrace, for ſuch men as by craft or Force wreſted the Power of a City from a Multitude to one man onely; and not for the *exerciſing*, but for the *ill-obtaining* of the Government: but now every man that is but thought to govern ill, or to be an ill man, is preſently termed a Tyrant, and ſo judged by his Subjects. Few remember the Prohibition, *Exod. 22. 28. Thou ſhalt not revile the Gods, nor curſe the Ruler of thy People*: and fewer underſtand the reaſon of it. Though we may not one judge another, yet we may ſpeak evil or revile one another, in that which hath been lawfully judged, and upon a Tryal wherein they have been heard and condemned: this is not to judge, but onely to relate the judgment of the Ruler. To ſpeak evil, or to revile a Supreme Judge, cannot be without judging him who hath no Superiour on Earth to judge him, and in that regard muſt alwayes be preſumed innocent, though never ſo ill, if he cannot lawfully be heard.

J. M. That will have it Tyranny in a King not to regard the Laws, doth himſelf give as little Regard to them as any man; where he reckons, that *Conteſting for Privileges, Cuſtoms, Forms, and that old entanglement of Iniquity, their gibriſh Laws, are the Badges of ancient Slavery.* *Tenure, pag. 3. a Diſputing Prefidents, Forms and Circumſtances, pag. 5.*

J. M. is alſo of opinion, That, *If at any time our Fore-fathers, out of baſeneſs, have loſt any thing of their*

Right, that ought not hurt us ; they might if they would promise Slavery for themselves, for us certainly they could not, who have always the same Right to free our selves, that they had to give themselves to any man in Slavery. This Doctrine well practised, layeth all open to constant Anarchy.

Lastly, If any desire to know what the Liberty of the People is, which J. M. pleads for, he resolves us, saying, That *he that takes away from the People the Right of Choosing what Form of Government they please, takes away truly that in which all Liberty doth almost consist.* It is well said by J. M. that all Liberty doth almost consist in Choosing their Form of Government, for there is another liberty exercised by the People, which he mentions not, which is the liberty of the Peoples Choosing their Religion ; every man may be of any Religion, or of no Religion ; Greece and Rome have been as famous for *Polytheisme*, or multitudes of gods, as of Governours ; and imagining Aristocratic and Democratic in Heaven, as on Earth.



OBSERVATIONS

UPON

H. Grotius

DE JURE

BELLII, & PACIS.

IN most Questions of Weight and Difficulty concerning the Right of War, or Peace, or Supreme Power, *Grotius* hath Recourse to the Law of Nature or of Nations, or to the Primitive Will of those men who first joyned in Society. It is necessary therefore a little to lay open the Variety or Contrariety in the Civil and Canon Law, and in *Grotius* himself, about the Law of Nature and Nations, not with a Purpose to raise any Contention about Words or Phrases, but with a Desire to reconcile or expound the Sense of different Terms.

Civili-

Civilians, Canonists, Politicians and Divines, are not a little perplexed in distinguishing between the Law of Nature, and the Law of Nations; about *Jus Naturæ*, and *Jus Gentium*, there is much Dispute by such as handle the Original of Government, and of Property and Community.

The Civil Law in one Text allows a threefold Division of Law, into *Jus Naturæ*, *Jus Gentium*, and *Jus Civile*. But in another Text of the same Law, we find only a twofold Division, into *Jus Civile*, and *Jus Gentium*. This latter Division the Law takes from *Gaius*, the former from *Ulpian*, who will have *Jus Naturale* to be that which Nature hath taught all Creatures, *quod Natura omnia animalia Docuit*, but for this he is confuted by *Grotius*, *Salmasius*, and others, who restrain the Law of Nature only to men using Reason; which makes it all one with the Law of Nations; to which the Canon Law consents, and saith, That *Jus Naturale est commune omnium nationum*: That which Natural Reason appoints all men to use, is the Law of Nations, saith *Theophilus* in the Text of the Civil Law: and in the second Book of the *Instit. cap. 1.* *Jus Naturæ* is confounded with *Jus Gentium*.

As the *Civilians* sometimes confound and sometimes separate the Law of Nature and the Law of Nations, so other-whiles they make them also contrary one to the other. By the Law of Nature all men are born free; *Jure naturali omnes liberi nascuntur*. But Servitude is by the Law of Nations: *Jure Gentium Servitus invasit*, saith *Ulpian*.

And

And the Civil Law not only makes the Law of Nature and of Nations contrary, but also will have the Law of Nations contrary to it self. *War*, saith the Law, *was brought in by the Law of Nations.* *Ex jure gentium introducta bella*, and yet the Law of Nations saith, *Since Nature hath made us all of one Kindred, it follows it is not lawful for one man to lye in Wait for another.* *Cum inter nos Cognitionem quandam natura constituit, consequens est hominem homini insidiari nefas esse*, saith *Florentinus*.

Again, the Civil Law teacheth, that from the Law of Nature proceeds the Conjunction of man and women, the Procreation and Education of Children. But as for Religion to God, and Obedience to Parents it makes it to be by the Law of Nations.

To touch now the Canon Law, we may find in one place that men are governed either by the Law of Nature, or by Customs. *Homines reguntur Naturali jure, aut moribus.* The Law of Nations they call a Divine Law, the Customs a humane Law; *Leges aut divine sunt aut humane; divine naturâ, humane moribus constant.* But in the next place the Canon Law makes *Jus* to be either *Naturale, aut Civile, aut Gentium.* Though this Division agree in Terms with that of *Ulpian* in the Civil Law, yet in the Explication of the Terms there is Diversity; for what one Law makes to belong to the Law of Nature, the other refers to the Law of Nations, as may easily appear to him that will take the Pains to compare the Civil and Canon Law in these Points,

A principal Ground of these Diversities and Contrarieties of Divisions, was an Error which the Heathens taught, that *all things at first were common*, and that *all men were equal*. This Mistake was not so heinous in those Ethnick Authors of the Civil Laws, who wanting the Guide of the History of *Moses*, were fain to follow Poets and Fables for their Leaders. But for Christians, who have read the Scriptures, to dream either of a *Community of all things*, or an *Equality of all Persons*, is a Fault scarce pardonable.

To salve these apparent Contrarieties of *Community* and *Property*; or *Equality* and *Subjection*: the Law of *Jus Gentium* was first invented; when that could not satisfy, to mend the matter, this *Jus Gentium*, was divided into a *Natural Law of Nations*, and an *Humane Law of Nations*; and the Law of Nature into a *Primary* and a *Secondary* Law of Nature; Distinctions which make a great sound, but edifie not at all if they come under Examination.

If there hath been a time when all things were common, and all men equal, and that it be otherwise now; we must needs conclude that the Law by which all things were common, and men equal, was contrary to the Law by which now things are proper, and men subject.

If we will allow *Adam* to have been Lord of the World and of his Children, there will need no such Distinctions of the Law of Nature and of Nations: For the Truth will be, that whatsoever the Heathens comprehended under these two Laws, is comprised in the Moral Law.

That

That the Law of Nature is one and the same with the Moral, may appear by a Definition given by *Grotius*. *The Law of Nature* (saith he) is the Dictate of Reason, shewing that in every Action by the agreeing or disagreeing of it with natural Reason, there is a moral Honesty or Dishonesty, and consequently that such an Action is commanded or forbidden by God the Author of Nature. I cannot tell how *Grotius* would otherwise have defined the Moral Law. And the Canon Law grants as much; teaching that the Law of Nature is contained in the Law and the Gospel: *Whatsoever ye will that men do, &c. Mat. 7.*

The Term of *Jus Naturæ* is not originally to be found in Scripture, for though *T. Aquinas* takes upon him to prove out of the 2. to the Romans, that there is a *Jus Naturæ*, yet *St. Paul* doth not use those express Terms; his words are, *The Gentiles which have not the Law, do by Nature the things contained in the Law, these having not the Law are a Law unto themselves*: He doth not say, Nature is a Law unto them, but they are a Law unto themselves. As for that which they call the Law of Nations, it is not a Law distinct, much less opposite to the Law of Nature, but it is a small Branch or Parcel of that great Law; for it is nothing but the Law of Nature, or the moral Law between Nations. The same Commandment that forbids one Private man to rob another, or one Corporation to hurt another Corporation, obliges also one King not to rob another King, and one Commonwealth not to spoil another: the same Law that enjoyns Charity to all men, even to Enemies,

mies, binds Princes and States to shew Charity to one another, as well as private Persons.

And as the *Common, or Civil Laws* of each Kingdom which are made against Treason, Theft, Murder, Adultery, or the like, are all and every one of them grounded upon some particular Commandment of the moral Law; so all the Laws of Nations must be subordinate and reducible to the moral Law.

The Law of Nature, or the moral Law is like the main Ocean, which though it be one entire Body, yet several Parts of it have distinct Names, according to the diversity of the Coasts on which they border. So it comes to pass that the Law of Nations which is but a part of the Law of Nature, may be sub-divided almost *in infinitum*, according to the Variety of the Persons, or Matters about which it is conversant.

The Law of Nature or the divine Law is general, and doth only comprehend some Principles of Morality notoriously known of themselves, or at the most is extended to those things which by necessary and evident Inference are consequent to those Principles. Besides these, many other things are necessary to the well-governing of a Commonwealth: and therefore it was necessary that by Humane Reason something more in particular should be determined concerning those things which could not be defined by Natural Reason alone; hence it is that Humane Laws be necessary, as Comments upon the Text of the Moral Law: and of this Judgment is *Aquinas*, who teacheth, that *necessitas legis humane manat ex eo, quod Lex natu-*

naturalis, vel Divina, generalis est, & solum complectitur quedam principia morum per se nota, & ad summum extenditur ad ea quæ necessaria & evidenti elatione ex illis principiis consequuntur: præter illa verò multa alia sunt necessaria in republica ad ejus rectam Gubernationem: & ideo necessarium fuit ut per humanam rationem aliqua magis in particulari determinarentur circa ea quæ per solam rationem naturalem definiri non possunt. Ludo. Molin de Just. Thus much may suffice to shew the Distractions in and between the *Civil and Common Laws* about the *Law of Nature and Nations*. In the next place we are to consider how *Grotius* distinguisheth these Laws.

To maintain the Community of things to be Natural, *Grotius* hath framed new Divisions of the Law of Nature. First, in his Preface to his Books *De Jure Belli & Pacis*, he produceth a Definition of the Law of Nature, in such doubtful, obscure and reserved Terms, as if he were diffident of his Undertaking: Next in his first Book and first Chapter he gives us another Distribution, which differs from his Doctrine in his Preface.

In his Preface his Principle is, that the *Appetite of Society, that is to say, of Community, is an Action proper to man*. Here he presently corrects himself with an Exception, that *some other Creatures are found to desire Society*; and withal he answers the Objections thus, that *this Desire of Society in brute Beasts, comes from some external Principle*. What he means by *Principium intelligens extrinsecum*, I understand not, nor doth he explain, nor is it material, nor is the Argument he useth
to

to any purpose; for, admitting all he saith to be true, yet his Principle fails; for the Question is not, from what Principle this Desire of Society proceeds in Beasts, but whether there be such a Desire or no. Besides, here he takes the Appetite of Society and Community to be all one, whereas many live in Society, which live not in Community.

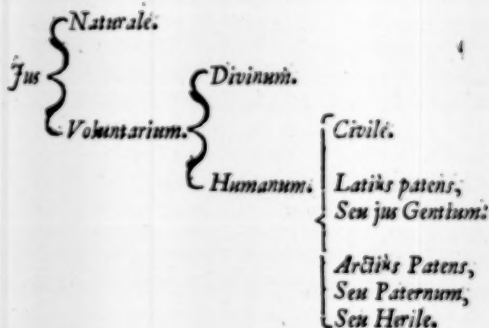
Next he teacheth, that *the keeping of Society* (*custodia Societatis*) which in a rude manner (saith he) we have now expressed, is the fountain of that Law which is properly so called. I conceive by the Law properly so called, he intends the Law of Nature, though he expresses not so much: And to this appetite of *Sociable Community* he refers *Alieni Abstinencia*; but herein it may be he forgets himself, for where there is *Community* there is neither *meum* nor *tuum*, nor yet *alienum*; and if there be no *alienum*, there can be no *alieni abstinencia*. To the same purpose he saith, that by the Law of Nature men must stand to bargains, *Juris naturæ sit stare pactis*. But if all things were common by Nature, how could there be any bargain?

Again, Grotius tells us, that from this signification of the Law there hath flowed another larger, which consists (saith he) in Discerning what delights us or hurts us, and in judging how things should be wisely distributed to each one. This latter he calls the looser Law of Nature; the former, *Jus Sociale*, the Law of Nature, strictly, or properly taken. And these two Laws of Nature should have place (saith he) though men should deny there were
a God:

a God. But to them that believe there is a God, there is another Original of Law, beside the Natural, coming from the free Will of God, to the which our own Understanding tells us we must be subject.

Thus have I gathered the Substance of what is most material concerning the Law of Nature, in his Preface.

If we turn to the Book it self, we have a division of the Law into



In the Definition of *Jus Naturale* he omits those Subtilties of *Jus Nature propria dictum*, and *quod laxius ita dicitur*, which we find in his Preface, and gives such a plain Definition, as may fitly agree to the Moral Law. By this it seems the Law of Nature and the Moral Law are one and the same.

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Whereas

Whereas he affirmeth, that the *Actions* about which the Law of Nature is conversant, are lawful or unlawful of themselves, and therefore are necessarily commanded or forbidden by God: by which mark this Law of Nature doth not onely differ from Humane Law, but from the Divine voluntary Law, which doth not command or forbid those things, which of themselves, and by their own nature are lawful or unlawful, but makes them unlawful by forbidding them, and due by commanding them. In this he seems to make the Law of Nature to differ from Gods Voluntary Law; whereas, in God, Necessary and Voluntary are all one. *Salmasius de Usuris*, in the twentieth Chapter, condemns this opinion of *Grotius*; though he name him not, yet he means him, if I mistake not.

In the next place, I observe his saying, that some things are by the Law of Nature, not *proprie*, but *reductivè*; and that the Law of Nature deals not onely with those things which are beside the Will of Man, but also with many things which follow the act of Mans Will: so Dominion, such as is now in Use, mans Will brought in: but now that it is brought in, it is against the Law of Nature, to take that from thee against thy Will, which is in thy Dominion.

Yet for all this *Grotius* maintains that the Law of Nature is so immutable, that it cannot be changed by God himself. He means to make it good with a Distinction, Some things (saith he) are by the Law of Nature, but not simply, but according to the certain State of things; so the common use of things was natural as long as Dominion was not brought

brought in; and Right for every man to take his own by Force, before Laws were made. Here if Grotius would have spoken plain, in stead of but not simply, but according to the certain State of Things, he would have said, but not immutably, but for a certain Time. And then this Distinction would have run thus; Some things are by the Law of Nature, but not immutably, but for a certain time. This must needs be the naked Sense of his Distinction, as appears by his Explication in the Words following, where he saith, that the Common Use of Things was natural so long as dominion was not brought in: Dominion he saith was brought in by the will of man, whom by this Doctrine Grotius makes to be able to change that Law which God himself cannot change, as he saith. He gives a double ability to man; first, to make that no Law of Nature, which God made to be the Law of Nature: And next, to make that a Law of Nature which God made not; for now that Dominion is brought in, he maintains, it is against the Law of Nature to take that which is in another mans dominion.

Besides, I find no Coherence in these words, By the Law of Nature it was right for every man to take his own by force, before Laws made; since by the Law of Nature no man had any thing of his own; and until Laws were made, there was no Propriety, according to his Doctrine.

Jus Humanum voluntarium latius patens, he makes to be the Law of Nations, which (saith he) by the Will of All, or Many Nations, hath received a power to bind, he adds, of Many, because

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there is, as he grants, scarce any Law to be found common to all Nations, besides the Law of Nature; which also is wont to be called the Law of Nations, being common to all Nations. Nay, as he confesseth often, that is the Law in one part of the World, which in another part of the World is not the Law of Nations.

By these Sentences, it seems *Grotius* can scarce tell what to make to be the Law of Nations, or where to find it.

Whereas he makes the Law of Nations to have a binding Power from the Will of men, it must be remembred, that it is not sufficient for men to have a Will to bind, but it is necessary also to have a Power to bind: Though several Nations have one and the same Law.

For instance, Let it be granted that Theft is punished by Death in many Countreys, yet this doth not make it to be a Law of Nations, because each Nation hath it but as a Natural, or Civil Law of their own Countrey; and though it have a binding Power from the Will of many Nations, yet because each Nation hath but a Will and Power to bind themselves, and may without prejudice consent, or, consulting of any Neighbour-Nation, Alter this Law, if they find Cause, it cannot properly be called the Law of Nations. That which is the foundation of the Law of Nations, is, to have it concern such things as belong to the mutual Society of
Lib. 4. c. 8. Nations among themselves, as *Grotius* confesseth; and not of such things as have no further relation than to the particular Benefit of each Kingdom: For, as private men must neglect
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their own Profit for the Good of their Countrey ; so particular Nations must sometimes remit part of their Benefit, for the Good of many Nations.

True it is, that in particular Kingdomes and Common-wealths there be Civil and National Laws, and also Customs that obtain the Force of Laws : But yet such Laws are ordained by some supreme Power, and the Customs are examined judged and allowed by the same supreme Power. Where there is no Supreme Power that extends over all or many Nations but only God himself, there can be no Laws made to bind Nations, but such as are made by God himself: we cannot find that God made any Laws to bind Nations, but only the Moral Law ; as for the Judicial Law, though it were ordained by God, yet it was not the Law of Nations, but of one Nation only, and fitted to that Commonwealth.

If any think that the Customs wherein many Nations do consent, may be called the Law of Nations, as well as the Customs of any one Nation may be esteemed for national Laws : They are to consider that it is not the being of a Custom that makes it lawful, for then all Customs, even evil Customs, would be lawful ; but it is the Approbation of the supreme Power that gives a Legality to the Custom : where there is no Supreme Power over many Nations, their Customs cannot be made legal.

The Doctrine of *Grotius* is, that God immediately after the Creation did bestow
Q 3 upon

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upon Mankind in general a Right over things
of inferiour Nature — From whence it
came to pass, that presently every man might
snatch what he would for his own Use, and
spend what he could, and such an Uni-
versal Right was then in stead of Proper-
ty; for what every one so snatched, ano-
ther could not take from him but by In-
jury.

How repugnant this Assertion of *Grotius* is to
the Truth of Holy Scripture, Mr. *Selden*
Lib. 1. c. 4. teacheth us in his *Mare Clausum*, say-
ing, that Adam by Donation from God, *Gen. 1. 28.*
was made the general Lord of all things, not without
such a private Dominion to himself, as (without his
Grant) did exclude his Children: and by Donation
and Assignment, or some kind of Cession (before he
was dead, or left any Heir to succeed him) his Chil-
dren had their distinct Territories by Right of private
Dominion: Abel had his Flocks, and Pastures for
them; Cain had his Fields for Corn, and the Land
of Nod where he built himself a City.

This Determination of Mr. *Selden's* being con-
sonant to the History of the Bible, and to natural
Reason, doth contradict the Doctrine of *Grotius*:
I cannot conceive why Mr. *Selden* should after-
wards affirm, that neither the Law of Nature, nor
the Divine Law, do command or forbid either Com-
munion of all things or private Dominion, but permit-
teth both,

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As for the general Community between *Noah* and his Sons, which Mr. *Selden* will have to be granted to them, *Gen. 9. 2.* the Text doth not warrant it; for although the Sons are there mentioned with *Noah* in the Blessing, yet it may best be understood with a Subordination or a Benediction in Succession, the Blessing might truly be fulfilled, if the Sons either under, or after their Father enjoyed a Private Dominion: it is not probable that the private Dominion which God gave to *Adam*, and by his Donation, Assignment or Cession to his Children was abrogated, and a Community of all things instituted between *Noah* and his Sons, at the time of the Flood: *Noah* was left the sole heir of the World, why should it be thought that God would dis-inherit him of his Birth-right, and make him of all the men in the World, the only Tenant in Common with his Children? If the Blessing given to *Adam*, *Gen. 1. 28.* be compared to that given to *Noah* and his Sons, *Gen. 9. 2.* there will be found a considerable Difference between those two Texts: In the Benediction of *Adam*, we find expressed a *subduing of the Earth*, and a *Dominion over the Creatures*, neither of which are expressed in the Blessing of *Noah* nor the Earth there once named, it is only said, *The Fear of you shall be upon the Creatures, and into your hands are they delivered*; then immediately it follows, *Every moving thing shall be meat for you, as the green Herb*: The first Blessing gave *Adam* Dominion over the Earth and all Creatures, the latter allows *Noah* Liberty to use the living Creatures for Food: here is no Alteration or dimi-

nothing of his Title to a Propriety of all things but an Enlargement onely of his Commons.

But, whether, with *Grotius*, Community came in at the Creation, or, with *Mr. Selden*, at the Flood, they both agree it did not long continue; *Sed veri non est simile hujusmodi communionem diu obtinuisse*, is the confession of *Mr. Selden*. It seems strange that *Grotius* should maintain, that Community of all things should be by the Law of Nature, of which God is the Author; and yet such Community should not be able to continue: Doth it not derogate from the Providence of God Almighty, to ordain a Community which could not continue? or doth it make the Act of our Fore-fathers, in Abrogating the natural Law of Community, by introducing that of Propriety, to be a Sin of a high presumption?

The prime Duties of the Second Table are conversant about the Right of Propriety: but if Propriety be brought in by a Humane Law (as *Grotius* teacheth) then the Moral Law depends upon the Will of man. There could be no Law against Adultery or Theft, if Women and all things were common,

Mr. Selden saith, that the Law of Nature, or of God, *nec vetuit, nec jubeat, sed permisit utrumque, tam nempe rerum communionem quam privatum Dominium*. And yet for Propriety (which he terms *primæva rerum Dominia*) he teacheth, that *Adam* received it from God, *à Numine acceperat*: And for Community, he saith, *We meet with evident footsteps of the Community of things in that donation of God, by which Noah and his three Sons are made Domini*

Domini pro indiviso rerum omnium. Thus he makes the private Dominion of *Adam*, as well as the common Dominion of *Noah* and his Sons, to be both by the Will of God. Nor doth he shew how *Noah*, or his Sons, or their Posterity, had any Authority to alter the Law of Community which was given them by God.

In distributing Territories (Mr. *Selden* saith) *the Consent, as it were, of Mankind (passing their promise, which should also bind their Posterity) did intervene, so that men departed from their common Right of Communion of those things which were so distributed to particular Lords or Masters.* This Distribution by Consent of Mankind, we must take upon Credit; for there is not the least proof offered for it out of Antiquity.

How the Consent of Mankind could bind Posterity when all things were common, is a Point not so evident: where Children take nothing by Gift or by Descent from their Parents, but have an equal and common Interest with them, there is no reason in such cases, that the Acts of the Fathers should bind the Sons.

I find no Cause why Mr. *Selden* should call Community a *pristine Right*; since he makes it but to begin in *Noah*, and to end in *Noah's* Children, or Grand-children at the most; for he confesseth the Earth, *a Noachidis seculis aliquot post diluvium esse divisam.*

That ancient Tradition, which by Mr. *Selden* acknowledgment hath obtained Reputation every where, seems most reasonable, in that it tells us, that *Noah* himself, as Lord of all, was Author of the distribution of the World,

World, and of private Dominion, and that by the appointment of an Oracle from God, he did confirm this Distribution by his last Will and Testament, which at his Death he left in the hands of his eldest Son Seth, and also warned all his Sons, that none of them should invade any of their Brothers Dominions, or injure one another, because from thence Discord and Civil War would necessarily follow.

Many conclusions in Grotius his Book *de Jure Belli & Pacis*, are built upon the foundation of these two Principles.

1. The first is, That *Communis rerum usus naturalis fuit*.

2. The second is, that *Dominium quale nunc in usu est, voluntas humana introduxit*.

Upon these two Propositions of natural Community and voluntary Propriety, depend divers Dangerous and Seditious conclusions, which are dispersed in several places. In the fourth Chapter of the first Book, the Title of which Chapter is, *Of the War of Subjects against Superiours*; Grotius handleth the Question, *Whether the Law of not resisting Superiours, do bind us in most grievous and most certain danger?* And his Determination is, that this Law of not resisting Superiours, seems to depend upon the Will of those men who at first joyned themselves in a Civil Society, from whom the Right of Government doth come to them that govern; if those had been at first asked, if their Will were to impose this burthen upon all, that they should choose rather to dye, than in any case by Arms to repell the force of Superiours; I know not whether they would answer, that it was their Will, unless perhaps with this

this addition, if Resistance cannot be made but with the great disturbance of the Commonwealth, and destruction of many Innocents. Here we have his Resolution, that in great and certain danger, men may resist their Governours, if it may be without disturbance of the Commonwealth: if you would know who should be Judge of the greatness and certainty of the Danger, or how we may know it, *Grotius* hath not one word of it, so that for ought appears to the contrary, his Mind may be that every private man may be Judge of the Danger, for other Judge he appoints none; it had been a foul Fault in so desperate a Piece of Service, as the resisting of Superiors, to have concealed the lawful Means, by which we may judge of the Greatness or Certainty of publick Danger, before we lift up our hands against Authority, considering how prone most of us are, to censure and mistake those things for great and certain Dangers, which in Truth many Times are no dangers at all, or at the most but very small ones; and so flatter our selves, that by resisting our Superiours we may do our Country laudible Service, without Disturbance of the Commonwealth, since the Effects of Sedition cannot be certainly judged of but by the Events only.

Grotius proceeds to answer an Objection against this Doctrine of resisting Superiors. If (saith he) any man shall say that this rigid Doctrine of dying, rather then resisting any Injuries of Superiours, is no humane, but a divine Law: It is to be noted, that men at first, not by any Precept of God, but of their own Accord, led by Experience of the Infirmities of
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separated Families against Violence, did meet together in Civil Society, from whence Civil Power took beginning, which therefore St. Peter calls an humane Ordinance, although elsewhere it be called a divine Ordinance, because God approveth the wholesome Institutions of men; God in Approving a humane Law is to be thought to approve it as humane, and in a humane Manner.

And again in another place he goeth further, and teacheth us, that if the Question happen to be concerning the Primitive Will of the People, it will not be amiss for the People that now are, and which are accounted the same with them that were long ago, to express their Meaning, in this matter, which is to be followed, unless it certainly appear, that the People long ago willed otherwise. lib. 2. c. 2.

For fuller Explication of his Judgment about resisting Superiours, he concludes thus: *The greater the thing is which is to be preserved, the greater is the Equity which reacheth forth an Exception against the words of the Law: yet I dare not (saith Grotius) without Difference condemn either simple men or a lesser part of the People, who in the last Refuge of Necessity, do so use this Equity, as that in the mean time, they do not forsake the Respect of the common Good.*

Another Doctrine of Grotius is, that the Empire which is exercised by Kings, doth not cease to be the Empire of the People; that Kings who in a lawful Order succeed those who were elected, have the supreme Power by an usufructuary Right only, and no Propriety.

Furthermore he teacheth, that the People may choose what Form of Government they please, and their
Will

Will is the Rule of Right. Populus eligere potest qualem vult gubernationis formam, neque ex præstantia formæ, sed ex voluntate jus metiendum est. lib. I. c. 3.

Also, that the People choosing a King may reserve some Acts to themselves, and may bestow others upon the King, with full Authority, if either an express Partition be appointed, or if the People being yet free do command their future King, by way of a standing Command, or if any thing be added by which it may be understood, that the King may be compelled or else punished.

In these Passages of Grotius which I have cited, we find evidently these Doctrines.

1. That Civil Power depends on the Will of the People.

2. That private men or petty Multitudes may take up Arms against their Princes.

3. That the lawfullest Kings have no Propriety in their Kingdoms, but an usufructuary Right only: as if the People were the Lords, and Kings but their Tenants.

4. That the Law of Not resisting Superiours, is a humane Law, depending on the Will of the People at first.

5. That the Will of the first People, if it be not known, may be expounded by the People that now are.

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No Doubt but *Grotius* foresaw what Uses the People might make of these Doctrines, by concluding, if the chief Power be in the People, that then it is lawful for them to compel and punish Kings as oft as they misuse their Power: Therefore he tells us, he rejects the Opinion of them, who every where and without Exception will have the chief Power to be so the Peoples, that it is lawful for them to compel and punish Kings as oft as they misuse their Power; and this Opinion he confesseth if it be altogether received, hath been and may be the Cause of many Evils. This cautelous Rejection qualified with these Terms of every where without Exception, and altogether, makes but a mixt Negation, partly negative, and partly affirmative (which our Lawyers call a negative Repugnant) which brings forth this modal Proposition, that in some Places with Exception, and in some sort the People may compel and punish their Kings.

But let us see how *Grotius* doth refute the general Opinion, that People may correct Kings. He frames his Argument in these words, It is lawful for every man to yield himself to be a private Servant to whom he please. What should hinder, but that also it may be lawful for a free People so to yield themselves to one or more, that the Right of governing them be fully set over without retaining any part of the Right? and you must not say, That this may not be presumed, for we do not now seek, what in a doubtful case may be presumed, but what by Right may be done. Thus far is the Argument, in which the most that is proved (if we gratifie him, and yield his whole Argument for good) is this, that
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the People may grant away their Power without retaining any part. But what is this to what the People have done? for though the People may give away their Power without Reservation of any part to themselves; yet if they have not so done, but have reserved a part, *Grotius* must confess, that the People may compel and punish their Kings if they transgress: so that by his Favour, the Point will be, not what by Right may be done, but what in this doubtful case hath been done, since by his own Rule it is the Will and Meaning of the first People that joyned in Society, that must regulate the Power of their Successours.

But on *Grotius* side it may be urged, that in all Presumption the People have given away their whole Power to Kings, unless they can prove they have reserved a part; for if they will have any Benefit of a Reservation or Exception, it lies on their part to prove their Exception, and not on the Kings Part who are in Possession.

This Answer, though in it self it be most just and good; yet of all men *Grotius* may not use it. For he saves the People the Labour of proving the primitive Reservation of their Forefathers, by making the People that now are competent Expositors of the meaning of those first Ancestors, who may justly be presumed, not to have been either so improvident for themselves, or so negligent of all their Posterity, when by the Law of Nature they were free and had all things common, at an Instant with any Condition or Limitation to give away that Liberty and Right of Community,
and

and to make themselves and their Childten eternally subject to the Will of such Governours as might misuse them without Controul.

On the behalf of the People, it may be further answered to *Grotius*, that although our Ancestors had made an absolute Grant of their Liberty, without any Condition expressed, yet it must be necessarily implied, that it was upon condition to be well-governed, and that the Non-performance of that implied Condition, makes the Grant void ; Or, if we will not allow an implicit Condition, then it may be said, that the Grant in it self was a void Grant, for being unreasonable, and a violation of the Law of Nature, without any valuable Consideration. What sound Reply *Grotius* can return to such Answers, I cannot conceive, if he keep himself to his first Principle of natural Community. As *Grotius's* Argument against the People is not sound, so his Answer to the Argument that is made for the People, is not satisfactory. It is objected, that *he that ordains, is above him that is ordained*. *Grotius* answers, *Verum duntaxat est in ea constitutione cujus effectus perpetuus pendet à voluntate constituentis, non etiam in ea que ab initio est voluntatis, postea vero effectum habet necessitatis, quomodo mulier virum sibi constituit, cui parere semper habet necesse*. The Reply may be, that by *Grotius's* former Doctrine the very Effect of the Constitution of Kings by the People, depends perpetually upon the Will of them that Constitute, and upon no other Necessity : he will not say, that it is by any necessity of the Law of Nature, or by any positive Law of God ; he teacheth,

eth, that *non Dei præcepto, sed sponte*, men entréd into Civil Society, that it is an Humane Ordinance, that God doth onely approve it *ut humanum, and humano modo*. He tells us further, that *Populus potest eligere qualem vult gubernationis formam, & ex voluntate jus metiendum est*; that the People may give the King as little Power as they will, and for as little time as they please, that they may make temporary Kings, as Dictators and Protectors: *jus quovis tempore revocabile, id est precarium*; as the Vandals in Africa, and the Goths in Spain, would depose their Kings as oft as they displeased them, *horum enim actus irriti possunt reddi ab his qui potestatem revocabiliter dederunt, ac proinde non idem est effectus nec jus idem*. Here he doth teach in plain words, the Effect doth depend upon the Will of the People. By this we may judge how improperly he useth the instance of a Woman, that appoints her self a Husband, whom she must alwayes necessarily obey, since the necessity of the continuance of the Wives obedience depends upon the Law of God, which hath made the Bond of Matrimony indissolvable. Grotius will not say the like for the continuance of the Subjects obedience to the Prince, neither will he say that Women may choose Husbands, as he tells us the People may choose Kings, by giving their Husbands as little Power, and for as little a Time as they please.

Next, it is objected, that *Tutors who are set over Pupils may be removed, if they abuse their Power*. Grotius answers, *In tutore hoc procedit qui superiorem habet, at in imperiis quia progressus non datur in infi-*

nitum, omnino in aliqua persona aut cætu consistendum est : We must stay in some one Person, or in a Multitude, whose faults (because they have no superiour Judge above them) God hath witnessed that he will have a particular care of, either to revenge them, if he judge it needful, or to tolerate them, either for Punishment, or Tryal of the People. It is true, in Kingdomes we cannot proceed in infinitum, yet we may, and must go to the highest, which by Grotius his Rule is the People, because they first made Kings, so that there is no need to stay in aliqua persona, but in cætu, in the People, so that by his Doctrine Kings may be punished by the People, but the faults of the People must be left to the Judgment of God.

I have briefly presented here the desperate Inconveniences which attend upon the Doctrine of the natural freedom and community of all things; these and many more Absurdities are easily removed, if on the contrary we maintain the natural and private Dominion of Adam, to be the fountain of all Government and Propriety : And if we mark it well, we shall find that Grotius doth in part grant as much ; The ground why those that now live do obey their Governours, is the Will of their Fore-fathers, who at the first ordained Princes, and, in obedience to that Will, the Children continue in subjection ; this is according to the mind of Grotius : so that the Question is not *Whether Kings have a fatherly Power over their Subjects, but how Kings came first by it.* Grotius will have it, that our Fore-fathers being all free, made an Assignment of their Power to Kings ; the other opinion

opinion denies any such general freedom of our Fore-fathers, but derives the Power of Kings from the Original Dominion of *Adam*.

This natural Dominion of *Adam* may be proved out of *Grotius* himself, who teacheth, that *generatione jus acquiritur Parentibus in Liberos*, and that naturally no other can be found, but the Parents to whom the Government should belong, and the Right of Ruling and Compelling them doth belong to Parents. And in another place he hath these words, speaking of the first Commandment, *Parentum nomine, qui naturales sunt Magistratus, etiam alios Rectores par est intelligi, quorum autoritas Societatem humanam continet*: and if Parents be natural Magistrates, Children must needs be born natural Subjects.

But although *Grotius* acknowledge Parents to be natural Magistrates, yet he will have it, that Children, when they come to full age, and are separated from their Parents, are free from natural Subjection. For this he offers proof out of *Aristotle*, and out of Scripture. First, for *Aristotle*, we must note, he doth not teach, that every separation of Children of full age, is an Obtaining of liberty, as if that men when they come to years, might voluntarily separate themselves, and cast off their natural Obedience; but *Aristotle* speaks onely of a passive Separation; for he doth not say that Children are subject to Parents until they do separate, but he saith, until they be separated, *χαρὶς δὲ*, in the Verb of the Passive Voice. That is, until by Law they be separated: for the Law (which is nothing else but the Will of him that hath

the Power of the Supreme Father) doth in many cases, for the publick Benefit of Society, free Children from subjection to the Subordinate Parent, so that the natural Subjection by such Emancipation of Children, is not extinguished, but onely assumed and regulated by the Parent paramount.

Secondly, *Grotius* cites *Numb.* 30. to prove that the Power of the Fathers over the Sons and Daughters, to dissolve their Vows, was not perpetual, but during the time only whilst the Children were part of the Fathers Family. But if we turn to the Chapter, we may find that *Grotius* either deceives himself, or us; for there is not one word in that Chapter concerning the Vows of Sons, but of Daughters only, being in their Father's Family; and the Being of the Daughter in the Father's House, meaneth only the Daughter's being a Virgin, and not married, which may be gathered by the Argument of the whole Chapter, which taketh particular order for the Vows of Women of all Estates. First, for Virgins, in the third verse. Secondly, for Wives in general, in the sixth verse. Thirdly, for Widows, and Women divorced, in the ninth verse. There is no Law for Virgins out of their Father's houses; we may not think they would have been omitted, if they had been free from their Fathers; we find no freedom in the Text for Women, till after Marriage: And if they were married, though they were in their Father's houses, yet the Fathers had no power of their Vows, but their Husbands.

If, by the Law of Nature, departure from the Fathers house had emancipated Children, why doth the Civil Law, contrary to the Law of Nature,

ture, give Power and Remedy to Fathers for to recover by Action of Law their Children that depart, or are taken away from them without their Consent? Without the Consent of Parents the Civil Law allows no emancipation.

Concerning Subjection of Children to Parents, Grotius distinguisheth three several times.

The first is the time of *Imperfect Judgment*.

The second is the time of *Perfect Judgment*: but whilst the Son remains part of the Father's Family.

The third is, the time after he hath departed out of his Father's Family.

In the first time he saith, *All the actions of Children are under the dominion of the Parents.*

During the second time, when they are of the age of mature Judgment, they are under their Father's Command in those actions onely, which are of moment for their Parents Family. In other actions the Children have a Power or moral Faculty of doing, but they are bound in those also to study alwayes to please their Parents. But since this Duty is not by force of any moral Faculty, as those former are, but onely of Piety, Observance, and Duty of repaying Thanks; it doth not make any thing void which is done against it, as neither a gift of any thing is void, being made by any Owner whatsoever, against the rules of Parsimony.

In both these times, the Right of Ruling and Compelling is (as Grotius acknowledgeth) comprehended so far forth as Children are to be compelled to their Duty, or amended; although the Power of a Parent doth so follow the person of a Father, that it cannot be

pulled away, and transferred upon another, yet the Father may naturally pawn, or also sell his Son, if there be need.

In the third time he saith, *the Son is in all things Free, and of his own Authority : always that Duty remaining of Piety and Observance, the cause of which is perpetual.* In this triple distinction, though Grotius allow Children in some cases during the second, and in all cases during the third time to be free, and of their own Power, by a moral Faculty : yet, in that he confesseth, *in all cases Children are bound to study always to please their Parents out of Piety and Duty, the cause of which, as he saith, is perpetual :* I cannot conceive, how in any case Children can naturally have any Power or moral Faculty of doing what they please without their Parents leave, since they are alwayes bound to study to please their Parents. And though by the Laws of some Nations, Children, when they attain to years of Discretion, have Power and Liberty in many actions ; yet this Liberty is granted them by Positive and Humane Laws onely, which are made by the Supreme Fatherly Power of Princes, who Regulate, Limit, or Assume the Authority of inferiour Fathers, for the publick Benefit of the Commonwealth : so that naturally the Power of Parents over their Children never ceaseth by any Separation; but only by the Permission of the transcendent Fatherly power of the Supreme Prince, Children may be dispensed with, or privileged in some cases, from obedience to subordinate Parents,

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Touching the Point of dissolving the Vows of Children, *Grotius* in his last Edition of his Book hath corrected his first: for in the first he teacheth, that the Power of the Father was greater over the Daughter dwelling with him, than over the Son; for her Vow he might make void, but not his: But instead of these words, in his last Edition, he saith, that the Power over the Son or Daughter to dissolve Vows, was not perpetual, but did indure as long as the Children were a part of their Fathers Family. About the meaning of the Text out of which he draws this Conclusion, I have already spoken.

Three wayes *Grotius* propoundeth, whereby Supreme Power may be had.

First, By full Right of Propriety.

Secondly, By an *Usufructuary Right*.

Thirdly, By a *Temporary Right*.

The Roman Dictators, saith he, had Supreme Power by a *Temporary Right*; as well those Kings who are first Elected, as those that in a lawful Right succeed to Kings elected, have Supreme Power by an *usufructuary Right*: some Kings that have got Supreme Power by a just War, or into whose Power some People, for avoiding a greater Evil, have so yielded themselves, as that they have excepted nothing, have a full Right of Propriety.

Thus we find but two means acknowledged by *Grotius*, whereby a King may obtain a full Right of Propriety in a Kingdome: That is, either by a just War, or by Donation of the People.

How a War can be just without a precedent Title in the Conquerour, *Grotius* doth not shew; and if the Title onely make the War just, then no

other Right can be obtained by War, than what the Title bringeth; for a just War doth onely put the Conquerour in possession of his old Right, but not create a New. The like which *Grotius* saith of Succession, may be said of War. Succession (saith he) is no Title of a Kingdome, which gives a Form to the Kingdom, but a Continuation of the Old; for the Right which began by the Election of the Family, is continued by Succession; wherefore, so much as the first Election gave, so much the Succession brings. So to a Conquerour that hath a Title, War doth not give, but put him in possession of a Right: and except the Conquerour had a full Right of Propriety at first, his Conquest cannot give it him: for if originally he and his Ancestors had but an usufructuary Right, and were outed of the possession of the Kingdom by an Usurper: here, though the Re-conquest be a most just War, yet shall not the Conquerour in this case gain any full Right of Propriety, but must be remitted to his usufructuary Right onely: for what Justice can it be, that the Injustice of a third Person, an Usurper, should prejudice the People, to the devesting of them of that Right of Propriety, which was reserved in their first Donation to their Elected King, to whom they gave but an usufructuary Right, as *Grotius* conceiveth? Wherefore it seems impossible, that there can be a just War, whereby a full Right of Propriety may be gained, according to *Grotius's* Principles. For if a King come in by Conquest, he must either conquer them that have a Governour, or those People that have none: if they have no Governour, then they are a free

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People, and so the War will be unjust to conquer those that are Free, especially if the Freedom of the People be by the primary Law of Nature, as *Grotius* teacheth: But if the People conquered have a Governour, that Governour hath either a Title or not; If he have a Title, it is an unjust War that takes the Kingdom from him: If he have no Title, but only the Possession of a Kingdom, yet it is unjust for any other man, that wants a Title also, to conquer him that is but in possession; for it is a just Rule, that where *the Cases are alike, he that is in Possession is in the better condition; In pari causa possidentis melior conditio.* Lib. 2. c. 23. And this by the Law of Nature, even in the judgment of *Grotius*. But if it be admitted, that he that attempts to conquer have a Title, and he that is in possession hath none: here the Conquest is but in nature of a possessory Action, to put the Conquerour in possession of a primer Right, and not to raise a new Title; for War begins where the Law fails: *Ubi Judicia deficiunt incipit Bellum.* Lib. 2. c. 1. And thus, upon the matter, I cannot find in *Grotius's* Book *de Jure Belli*, how that any Case can be put wherein by a just War a man may become a King, pleno Jure Proprietatis.

All Government and Supreme Power is founded upon publick Subjection, which is thus defined by *Grotius*. *Publica Subjectio est, qua se Populus homini alicui, aut pluribus hominibus, aut etiam populo alteri in ditionem dat.* Lib. 2. c. 5. If Subjection be the Gift of the People, how can Supreme Power, pleno Jure, in full Right, be got by a just War?

As

As to the other means whereby Kings may get Supreme Power in full Right of Propriety, *Grotius* will have it to be, *when some People, for avoiding a greater Evil, do so yield themselves into anothers Power, as that they do except nothing.* It would be considered how, without War, any People can be brought into such danger of Life, as that because they can find no other ways to defend themselves, or because they are so pressed with Poverty, as they cannot otherwise have means to sustain themselves, they are forced to renounce all Right of Governing themselves, and deliver it to a King.

But if such a Case cannot happen, but by a War onely, which reduceth a People to such terms of Extremity, as compells them to an absolute Abrenuntiation of all Sovereignty: then War, which causeth that necessity, is the prime means of extorting such Sovereignty, and not the free Gift of the People, who cannot otherwise choose but give away that Power which they cannot keep.

Thus, upon the Reckoning, the two ways propounded by *Grotius*, are but one way; and that one way, in conclusion, is no way whereby Supreme Power may be had in full Right of Propriety. His two ways are, a *Just War*, or a *Donation of the People*; a just War cannot be without a Title, no Title without the Donation of the People, no Donation without such a Necessity as nothing can bring upon the Donors but a War. So that howsoever *Grotius* in words acknowledges that Kings may have a full Right of Propriety, yet by consequence he denies it, by such circular Suppositions, as by coincidence destroy each other, and in effect

effect he leaves all People a Right to plead in Bar against the Right of Propriety of any Prince, either *per minas*, or *per dures*.

Many times, saith *Grotius*, it happens, that War is grounded upon *Expletive Justice*, *Justitiam Expletivam*, which is, when a man cannot obtain what he ought, he takes that which is as much in value, which in moral Estimation is the same. For in War, when the same Province cannot be recovered, to the which a man hath a Title, he recovers another of the like value. This recovery cannot give a full right of Propriety: because the Justice of such a War reacheth no farther than to a compensation for a former Right to another thing, and therefore can give no new Right.

I am bound to take notice of a Case put by *Grotius*, amongst those Causes which he thinks should move the People to renounce all their Right of Governing, and give it to another. It may also happen (saith he) that a Father of a Family possessing large Territories, will not receive any man to dwell within his Land upon any other condition. And in another place, he saith, that all Kings are not made by the People, which may be sufficiently understood by the Examples of a Father of a Family receiving Strangers under the Law of Obedience. In both these Passages we have a close and curt acknowledgment, that a Father of a Family may be an absolute King over Strangers, without Choice of the People; now I would know whether such Fathers of Families have not the same absolute Power over their own Children, without the Peoples Choice, which he allows them over Strangers:
if

if they have, I cannot but call them Absolute proprietary Kings, though *Grotius* be not willing to give them that Title in plain terms : for indeed to allow such Kings, were to condemn his own Principle, that *Dominion came in by the Will of the People* ; and so consequently to overthrow his *Usufructuary Kings*, of whom I am next to speak.

Grotius saith, that the Law of Obeying, or Resisting Princes, depends upon the Will of them who first met in Civil Society, from whom Power doth flow to Kings : And, that men of their own accord came together into Civil Society, from whence springs Civil Power, and the People may choose what Form of Government they please. Upon these Suppositions, he concludes, that Kings, elected by the People, have but an *Usufructuary Right*, that is, a Right to take the Profit or Fruit of the Kingdom, but not a Right of Propriety or Power to alienate it. But why doth he call it an *Usufructuary Right* ? It seems to me a term too mean or base to express the Right of any King, and is derogatory to the Dignity of Supreme Majesty. The word *Usufructuary* is used by the Lawyers, to signify him that hath the Use, Profit or Fruit of some Corporal thing, that may be used without the Property, for of fungible things (*res fungibiles*, the *Civilians* call them) that are spent or consumed in the Use, as Corn, Wine, Oyl, Money, there cannot be an *Usufructuary Right*.

It is to make a Kingdom all one with a Farm, as if it had no other Use but to be let out to him that can make most of it : whereas, in truth, it is the

the Part and Duty of a King to govern, and he hath a Right so to do, and to that End Supreme Power is given unto him; the taking of the Profit, or making Use of the Patrimony of the Crown, is but as a means onely to enable him to perform that great work of Government.

Besides, *Grotius* will not onely have an elected King, but also his lawful Successors, to have but an *Usufructuary Right*, so that though a King hath a Crown to him and to his Heirs, yet he will allow him no Propriety, because he hath no Power to alienate it; for he supposeth the primary Will of the People to have been to bestow Supreme Power to go in Succession, and not to be alienable; but for this he hath no better proof than a naked presumption: *In Regnis quæ Populi voluntate delata sunt concedo non esse presumendum eam fuisse Populi voluntatem, ut alienatio Imperii sui Regi permitteretur.*

But though he will not allow Kings a Right of Propriety in their Kingdoms, yet a Right of Propriety there must be in some body, and in whom but in the People? for he saith, *the Empire which is exercised by Kings, doth not cease to be the Empire of the People.* His meaning is, the Use is the King's, but the Property is the Peoples.

But if the Power to alienate the Kingdom be in him that hath the Property, this may prove a comfortable Doctrine to the People: but yet to allow a Right of Succession in Kings, and still to reserve a Right of Property in the People, may make some contradiction: for the Succession must either hinder the Right of Alienation which is in the
People,

People, or the Alienation must destroy that Right of Succession, which, by *Grotius's* confession, may attend upon elected Kings.

Though *Grotius* confess, that Supreme Power be *Unum quiddam, and in it self indivisible*, yet he saith, *Sometimes it may be divided either by parts potential, or subjunctive*. I take his meaning to be, that the Government or the Governed may be divided: an Example he gives of the *Roman Empire*, which was divided, into the *East and West*: but whereas he saith, *fieri potest, &c. It may be, the People choosing a King, may reserve some Actions to themselves, and in others they may give full power to the King*: The Example he brings out of *Plato* of the *Heraclides* doth not prove it, and it is to dream of such a Form of Government as never yet had name, nor was ever found in any settled Kingdom, nor cannot possibly be without strange Confusion.

If it were a thing so voluntary, and at the pleasure of men, when they were free, to put themselves under Subjection, why may they not as voluntarily leave Subjection when they please, and be free again? If they had a liberty to change their Natural Freedom, into a voluntary Subjection, there is stronger reason that they may change their voluntary Subjection into natural Freedom, since it is as lawful for men to alter their Wills as their Judgments.

Certainly, it was a rare felicity, that all the men in the World at one instant of time should agree together in one mind, to change the Natural Community of all things into Private Dominion:

for

for without such an unanimous Consent, it was not possible for Community to be altered: for, if but one man in the World had dissented, the Alteration had been unjust, because that Man by the Law of Nature had a Right to the common Use of all things in the World; so that to have given a Propriety of any one thing to any other, had been to have robbed him of his Right to the common Use of all things. And of this Judgment the Jesuit *Lud. Molina* seems to be, in his Book *De Justitia*, where he saith, *Si aliquis de cohabitantibus, &c.* If one of the Neighbours will not give his Consent to it, the Commonwealth should have no Authority over him, because then every other man hath no Right or Authority over him, and therefore can they not give Authority to the Commonwealth over him.

If our first Parents, or some other of our Forefathers did voluntarily bring in Propriety of Goods, and Subjection to Governours, and it were in their power either to bring them in or not, or having brought them in, to alter their minds, and restore them to their first condition of Community and Liberty; what reason can there be alleged that men that now live should not have the same power? So that if any one man in the World, be he never so mean or base, will but alter his Will, and say, he will resume his Natural Right to Community, and be restored unto his Natural Liberty, and consequently take what he please, and do what he list; who can say that such a man doth more than by Right he may? And then it will be lawful for every man, when he please,

to

72 *Observations upon H. Grotius &c.*

to dissolve all Government, and Destroy all Property.

Whereas *Grotius* saith, *That by the Law of Nature all things were at first Common*; and yet teacheth, that *after Propriety was brought in, it was against the Law of Nature to use Community*; He doth thereby not onely make the Law of Nature changeable, which he saith God cannot do, but he also makes the Law of Nature contrary to it self.

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THE
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THE PREFACE.

WE do but flatter our selves;
if we hope ever to be go-
verned without an Arbi-
trary Power. No : we mi-
stake, the Question is not, Whether there
shall be an Arbitrary Power ; but the only
point is, Who shall have that Arbitrary
Power, whether one man or many ? There
never was, nor ever can be any People go-
vern'd without a Power of making Laws,
and every Power of making Laws must be
Arbitrary : For to make a Law according
to Law, is Contradictio in adjecto. It is
generally confessed, that in a Democracy
the Supreme or Arbitrary Power of making
Laws is in a multitude ; and so in an A-
ristocracy the like Legislative or Arbitrary
Power is in a few, or in the Nobility. And
therefore by a necessary Consequence, in a
Monarchy the same Legislative Power must
be in one ; according to the Rule of Ari-
stotle ;

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The Preface.

Stotle, who saith, Government is in One, or in a Few, or in Many.

This antient Doctrin of Government, in these latter days hath been strangely refined by the Romanists, and wonderfully improved since the Reformation, especially in point of Monarchy, by an Opinion, That the People have Originally a Power to create several sorts of Monarchy, to limit and compound them with other Forms of Government, at their pleasure.

As for this natural Power of the People, they finde neither Scripture, Reason, or Practice to justifie it: For though several Kingdoms have several and distinct Laws one from another; yet that doth not make several sorts of Monarchy: Nor doth the difference of obtaining the Supreme Power, whether by Conquest, Election, Succession, or by any other way, make different sorts of Government. It is the difference only of the Authors of the Laws, and not of the Laws themselves, that alters the Form of Government; that is, whether one man, or more than one, make the Laws.

Since the growth of this new Doctrin, Of the Limitation and Mixture of Monarchy, it is most apparent, that Monarchy hath been crucified (as it were) between

two

The Preface.

two Thieves, the Pope and the People ; for what Principles the Papists make use of for the Power of the Pope above Kings, the very same, by blotting out the word Pope, and putting in the word People, the Plebists take up to use against their Sovereigns.

If we would truly know what Popery is, we shall finde by the Laws and Statutes of the Realm, that the main, and indeed the only Point of Popery, is the alienating and withdrawing of Subjects from their Obedience to their Prince, to raise Sedition and Rebellion : If Popery and Popularity agree in this Point, the Kings of Christendome, that have shaken off the Power of the Pope, have made no great bargain of it, if in place of one Lord abroad, they get many Lords at home within their own Kingdoms.

I cannot but reverence that Form of Government which was allowed and made use of for God's own People, and for all other Nations. It were Impiety, to think that God, who was careful to appoint Judicial Laws for his chosen People, would not furnish them with the best Form of Government : or to imagine that the Rules given in divers places in the Gospel, by

The Preface.

our blessed Saviour and his Apostles, for Obedience to Kings, should now, like Almanacks out of date, be of no use to us; because it is pretended, We have a Form of Government now, not once thought of in those days. It is a shame and scandal for us Christians, to seek the Original of Government from the Inventions or Fictions of Poets, Orators, Philosophers, and Heathen Historians, who all lived thousands of Years after the Creation, and were (in a manner) ignorant of it: and to neglect the Scriptures, which have with more Authority most particularly given us the true Grounds and Principles of Government.

These Considerations caused me to scruple this Modern piece of Politicks, touching Limited and Mixed Monarchy: and finding no other that presented us with the nature and means of Limitation and Mixture, but an Anonymus Author; I have drawn a few brief Observations upon the most considerable part of his Treatise, in which I desire to receive satisfaction from the Author himself, if it may be, according to his promise in his Preface; or if not from him, from any other for him.

T H E



THE
ANARCHY
Of a Limited or Mixed
MONARCHY.



Here is scarce the meanest man of the multitude, but can now in these days tell us that the Government of the Kingdom of England is a LIMITED and MIXED Monarchy: And it is no marvail, since all the disputes and arguments of these distracted times both from the Pulpit and the Presse to tend and end in this Conclusion.

The Author of the Treatise of Monarchy hath copiously handled the nature and manner of *Limited* and *Mixed* Monarchy, and is the first and onely man (that I know) hath undertaken the task of describing it; others onely mention it, as taking it for granted.

Doctor *Ferne* gives the Author of this Treatise of Monarchy this testimony, that *the Mixture of Government is more accurately delivered* P.3. *and urged by this Treatise than by the Author*

of the Fuller Answer. And in another place Doctor Ferne saith, he allows his *distinction of Monarchy into Limited and Mixed.* P.13.

I have with some diligence looked over this Treatise, but cannot approve of these distinctions which he propounds; I submit the reasons of my dislike to others judgements. I am somewhat confident that his doctrine of *Limited and Mixed Monarchy* is an opinion but of yesterday, and of no antiquity, a meer innovation in policy, not so old as *New England*, though calculated properly for that Meridian. For in his first part of the Treatise which concerns Monarchy in General, there is not one proof, text, or example in Scripture that he hath produced to justify his conceit of *Limited and Mixed Monarchy*. Neither doth he afford us so much as one passage or reason out of *Aristotle*, whose books of *Politicks*, and whose natural reasons are of greatest authority and credit with all rational men, next to the sacred Scripture: Nay, I hope I may affirm, and be able to prove, that *Arist.* doth confute both *limited and mixed Monarchy*, howsoever Doctor Ferne P.6. think these new opinions to be raised upon *Arist.* principles. As for other Politicians or Historians, either divine or humane, ancient or modern, our Author brings not one to confirm his opinions; nor doth he, nor can he shew that ever any Nation or people were governed by a *limited or mixed Monarchy*.

Machivel is the first in Christendome that I can find that writ of a *Mixed Government*, but not one syllable of a *Mixed Monarchy*: he, in his discourses or disputations upon the Decades of *Livy*, falls so enamored

enamored with the Roman Common-wealth, that he thought he could never sufficiently grace that popular government, unless he said, there was something of Monarchy in it: yet he was never so impudent as to say, it was a *mixed* Monarchy. And what *Machivel* hath said for *Rome*, the like hath *Contarene* for *Venice*. But *Bodin* hath layed open the errors of both these, as also of *Polybius*, and some few others that held the like opinions. As for the Kingome of *England*, if it have found out a form of Government (as the Treatise layeth it down) of such perfection as never any people could; It is both a glory to the Nation, and also to this Author, who hath first decipher'd it.

I now make my approach to the Book it self: The title is, *A Treatise of Monarchy*. The first part of it is, of *Monarchy in General*: Where first, I charge the Author, that he hath not given us any definition or description of Monarchy in General: for by the rules of method he should have first defined, and then divided: for if there be several sorts of Monarchy, then in something they must agree, which makes them to be Monarchies; and in something they must disagree and differ, which makes them to be several sorts of Monarchies. In the first place he should have shewed us in what they all agreed, which must have been a definition of Monarchy in General, which is the foundation of the Treatise; and except that be agreed upon, we shall argue upon we know not what. I press not this main omission of our Author out of any humour of wrangling, but because I am confident that had he pitched upon any definition of Monarchy in
Gene-

General, his own definition would have confuted his whole Treatise: Besides, I find him pleased to give us a handsome definition of *Absolute Monarchy*, from whence I may infer, that he knew no other definition that would have fitted all his other sorts of Monarchy; it concerned him to have produced it, lest it might be thought there could be no Monarchy but Absolute.

What our Author hath omitted, I shall attempt to supply, and leave to the scanning. And it shall be a real as well as nominal definition of Monarchy. *A Monarchy is the Government of one alone.* For the better credit of this definition, though it be able to maintain it self, yet I shall deduce it from the principles of our Author of the Treatise of Monarchy.

We all know that this word *Monarch* is compounded of two Greek words, *Μόνος* and *ἄρχων*; *ἄρχων* is *imperare*, to govern and rule; *μόνος* signifies *one alone*. The understanding of these two words may be picked out of our Author. First, for Government he teacheth us, it is *Potestatis exercitium*, the exercise of a moral power; next he grants us, that every *Monarch* (even his limited Monarch) must have the *Supream* power of the State

P.1. in him, so that his power must no way be limited by any power above his; for then he were not a Monarch, but a subordinate Magistrate. Here we have a fair confession of a supream unlimited power in his limited Monarch: if you will know what he means by these words *supream power*, turn to his 26 page, there you will finde, *Supream power is either Legislative, or Gubernative, and that the Legislative power is the chief of the two*; he makes both

both supream, and yet one chief: the like distinction he hath before, where he saith, *The power of Magistracy, in respect of its degrees, is P.5. Nomothetical or Architectionical; and Gubernative or Executive: by these words of Legislative, Nomothetical, and Architectionical power, in plain English, he understands a power of making Laws; and by Gubernative and Executive, a power of putting those Laws in execution, by judging and punishing offenders.*

The result we have from hence is, that by the Authors acknowledgment, every Monarch must have the supream power, and that supream power is, a power to make laws: and howsoever the Author makes the Gubernative and Executive power a part of the supream power; yet he confesseth the Legislative to be chief, or the highest degree of power, for he doth acknowledge degrees of supream power; nay, he afterwards teacheth us, that *the Legislative power is the height of power, to P.40. which the other parts are subsequent and subservient: if Gubernative be subservient to Legislative, how can Gubernative power be supream?*

Now let us examine the Authors *Limited Monarch* by these his own rules; he tells us, that in a *moderated, limited, stinted, conditionate, legal or allayed Monarchy,* (for all these terms he hath for it) *the supream power must be restrained by some Law according to which this power was given, and by direction of which this power must act; when in a line before he said, that the Monarchs power must not be limited by any power above his: yet here he will have his supream power restrained; not limited, and yet restrained: is not a restraint,*

a limitation? and if restrained, how is it supreme? and if restrained by some Law, is not the power of that Law, and of them that made that Law, above his supreme power? and if by the direction of such Law only he must govern, where is the Legislative power, which is the chief of supreme power? When the Law must rule and govern the Monarch, and not the Monarch the Law,

he hath at the most but a Gubernative or

P.14. Executive power: *If his authority transcends its bounds, if it command beyond the law, and the Subject is not bound legally to subjection in such cases, and if the utmost extent of the law of the land be the measure of the Limited Monarchs*

P.16. *power, and Subjects duty, where shall we find the supreme power, that Culmen or apex potestatis, that prime apex, which our Author saith, must be in every Monarch: The word apex, which signifies principality and power, doth also signify principium, beginning; which doth teach us, that by the word Prince, or principality, the principium or beginning of Government is meant; this, if it be given to the Law, it robs the Monarch, and makes the Law the primum mobile; and so that which is but the instrument, or servant to the Monarch, becomes the master. Thus much of the word apex.*

The other word is *solus*, *solus*, one alone: the Monarch must not only have the supreme power unlimited, but he must have it alone (with-

P.15. out any companions.) Our Author teacheth us, *He is no Monarch if the Supreme power*

P.17. *be not in one.* And again he saith, *if you put the apex potestatis, or supreme power, in the*

the whole body, or a part of it, you destroy the being of Monarchy.

Now let us see if his mixed Monarchy be framed according to these his own principles: First, he saith, *in a mixed Monarchy the sovereign power must be originally in all three Estates.* And again, his words are, *The three Estates are all sharers in the supream power — the primity of share in the supream power is in One.* Here we find, that he that told us the supream power must be in one, will now allow his mixed Monarch but one share only of the supream power, and gives other shares to the Estates: thus he destroys the being of Monarchy, by putting the *supream power, or culmen potestatis, or a part of it, in the whole body, or a part thereof*; and yet formerly he confesseth, that *the power of Magistracy cannot well be divided, for it is one simple thing, or indivisible beam of divine perfection*: but he can make this indivisible beam to be divisible into three shares. I have done with the word *unus, solus, alone.* P.5.

I have dwelt the longer upon this definition of Monarchy, because the apprehending of it out of the Authors own grounds, quite overthrows both his *Monarch Limited by Law*, and his *Monarch Mixed with the States*. For to Govern, is to give a Law to others, and not to have a Law given to Govern and limit him that Governs: And to govern alone, is not to have sharers or companions mixed with the Governor. Thus the two words of which Monarchy is compounded, contradict the two sorts of Monarchy which he pleads for; and by consequence his whole Treatise: for these two sorts of *limited and mixed*

ed Monarchy take up (in a manner) his whole Book.

I will now touch some few particular passages in the Treatise.

P.2. Our Author first confesseth, *it is Gods express ordinance there should be Government*; and he proves it by *Gen. 3. 16.* where God ordained *Adam* to rule over his *Wife*, and her desires were to be subject to his; and as hers, so all theirs that should come of her. Here we have the original grant of Government, and the fountain of all power placed in the *Father* of all mankind; accordingly we finde the *law* for obedience to government given in the terms of *honour thy Father*: not only the constitution of power in general; but the limitation of it to one kind (that is, to Monarchy, or the government of one alone) and the determination of it to the individual person and line of *Adam*, are all three ordinances of God. Neither *Eve* nor her Children could either limit *Adams* power, or joyn others with him in the government; and what was given unto *Adam*, was given in his person to his posterity. This paternal power continued monarchical to the Floud, and after the Floud to the confusion of *Babel*: when Kingdoms were first erected, planted, or scattered over the face of the world, we finde *Gen. 10. 11.* it was done by Colonies of whole families, over which the prime Fathers had supream power, and were Kings, who were all the sons or grand-children of *Noah*, from whom they derived a fatherly and regal power over their families. Now if this supream power was settled and founded by God himself in the fatherhood, how is it possible for the people

to have any right or title to alter and dispose of it otherwise? what commission can they shew that gives them power either of *limitation or mixture*? It was Gods ordinance, that Supremacy should be unlimited in *Adam*, and as large as all the acts of his will: and as in him, so in all others that have supream power, as appears by the judgement and speech of the people to *Joshuah* when he was supream Governour, these are their words to him, *All that thou commandest us we will do; whosoever he be that doth rebel against thy commandment, and will not hearken unto thy words in all that thou commandest him, he shall be put to death*: we may not say that these were evil Councillours or flattering Courtiers of *Joshuah*, or that he himself was a Tyrant for having such arbitrary power. Our Author, and all those who affirm that *power is conveyed to persons by publick consent*, are forced to confess, that it is the fatherly power that first inables a people to make such conveyance; so that admitting (as they hold) that our Ancestors did at first convey power, yet the reason why we now living do submit to such power, is, for that our Fore-fathers every one for himself, his family, and posterity, had a power of resigning up themselves and us to a supream power. As the Scripture teacheth us that *supream power was originally in the fatherhood without any limitation*, so likewise Reason doth evince it, that if God ordained that Supremacy should be, that then Supremacy must of necessity be unlimited: for the power that limits must be above that power which is limited; if it be limited, it cannot be supream: so that if our Author will grant supream power to be the ordinance

nance of God, the supream power will prove it self to be unlimited by the same ordinance, because a supream limited power is a contradiction.

The Monarchical power of *Adam* the Father of all flesh, being by a general binding ordinance settled by God in him and his posterity by right of fatherhood, the form of Monarchy must be preferr'd above other forms, except the like ordinance for other forms can be shewed: neither *may men according to their relations to the form they live under, to their affections and judgments in divers respects, prefer or compare any other form with Monarchy.* The point that most perplexeth our Author and many others, is, that if Monarchy be allowed to be the ordinance of God, *an absurdity would follow, that we should uncharitably condemn all the Communities which have not that form, for violation of Gods ordinance, and pronounce those other powers unlawful.* If those who live under a Monarchy can justify the form they live under to be Gods ordinance, they are not bound to forbear their own justification, because others cannot do the like for the form they live under; let others look to the defence of their own Government: if it cannot be provd or shewd that any other form of government had ever any lawful beginning, but was brought in or erected by Rebellion, must therefore the lawful and just obedience to Monarchy be denied to be the ordinance of God?

To proceed with our Author; in the 3 page he saith, *the Higher Power is Gods ordinance: That it resideth in One or more, in such or such a way, is from humane designment; God by no word binds any people to this or that form, till they by their own act bind themselves.* Because the power and consent

sence of the people in government is the burden of the whole Book, and our author expects it should be admitted as a magisterial postulation, without any other proof than a naked supposition; and since others also maintain that *originally Power was, or now is in the People*, & that *the first Kings were chosen by the People*: they may not be offended, if they be asked in what sence they understand the word [People] because this, as many other words, hath different acceptions, being sometimes taken in a larger, otherwhiles in a stricter sence. Literally, and in the largest sence, the word *People* signifies the *whole multitude of mankind*; but *figuratively* and *synecdochically*, it notes many times the *major part* of a multitude, or sometimes the *better*, or the *richer*, or the *wiser*, or some other part; and oftentimes a very *small* part of the people, if there be no other *apparent* opposite party, hath the name of the people *by presumption*.

If they understand that the entire multitude or whole people have originally by nature power to chuse a King, they must remember, that by their own principles and rules, by nature all mankind in the world makes but one People, who they suppose to be born alike to an equal freedom from subjection; and where such freedom is, there all things must of necessity be common: and therefore without a joyned consent of the whole people of the world, no one thing can be made proper to any one man, but it will be an injury, and an usurpation upon the common right of all others. From whence it follows, that natural *freedom* being once granted, there cannot be any one man chosen a King without the universal consent of all

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the people of the world at one instant, *nemine contradicente*. Nay, if it be true that *nature* hath made all men free; though all mankind should concur in one vote, yet it cannot seem reasonable, that they should have power to alter the law of nature; for if no man have power to take away his own life without the guilt of being a murderer of himself, how can any people confer such a power as they have not themselves upon any one man, without being accessories to their own deaths, and every particular man become guilty of being *felo de se*?

If this general signification of the word *people* be disavowed, and men will suppose that the *people* of particular Regions or Countries have power and freedom to chuse unto themselves Kings; then let them but observe the consequence: Since nature hath not distinguished the habitable world into Kingdomes, nor determined what part of a *people* shall belong to one Kingdome, and what to another, it follows, that the original freedom of mankind being supposed, every man is at liberty to be of what Kingdome he please, and so every petty company hath a right to make a Kingdom by it self; and not onely every City, but every Village, and every Family, nay and every particular man, a liberty to chuse himself to be his own King if he please; and he were a madman that being by nature free, would chuse any man but himself to be his own Governour. Thus to avoid the having but of one King of the whole world, we shall run into a liberty of having as many Kings as there be men in the world, which upon the matter, is to have no King at all, but to leave

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all men to their natural liberty, which is the mischief the Pleaders for *natural liberty* do pretend they would most avoid.

But if neither the whole people of the world, nor the whole people of any part of the world be meant, but only the *major part*, or some other part of a part of the world; yet still the objection will be the stronger. For besides that nature hath made no partition of the world, or of the people into distinct Kingdomes, and that without an universal consent at one and the same instant no partition can be made: yet if it were lawful for particular parts of the world by consent to chuse their Kings, nevertheless their elections would bind none to subjection but only such as consented; for the *major part* never binds, but where men at first either agree to be so bound, or where a higher power so commands: Now there being no higher power than nature, but God himself; where neither nature nor God appoints the *major part* to bind, their consent is not binding to any but only to themselves who consent.

Yet, for the present to gratifie them so far as to admit that either by nature, or by a general consent of all mankind, the world at first was divided into particular Kingdomes, and the *major part* of the people of each Kingdome assembled, allowed to chuse their King: yet it cannot truly be said that ever the *whole people*, or the *major part*, or indeed any considerable part of the whole people of any nation ever assembled to any such purpose. For except by some secret miraculous instinct they should all meet at one time, and place; what one man, or company of men less than the whole

people hath power to appoint either time or place of elections, where all be alike *free by nature* ? and without a lawful summons, it is most unjust to bind those that be absent. The whole people cannot summon it self ; one man is sick, another is lame, a third is aged, and a fourth is under age of discretion : all these at some time or other, or at some place or other, might be able to meet, if they might chuse their own time and place, as men naturally free should.

In Assemblies that are by humane politique constitution, the superior power that ordains such assemblies, can regulate and confine them, both for time, place, persons, and other circumstances : but where there is an equality by nature, there can be no superior power ; there every Infant at the hour it is born in, hath a like interest with the greatest and wisest man in the world. Mankind is like the sea, ever ebbing or flowing, every minute one is born, another dies ; those that are the people this minute, are not the people the next minute, in every instant and point of time there is a variation : no one time can be indifferent for all mankind to assemble ; it cannot but be mischievous always at the least to all Infants, and others under age of discretion ; not to speak of women, especially Virgins, who by birth have as much *natural freedom* as any other, and therefore ought not to lose their liberty without their own consent.

But in part to salve this, it will be said that Infants and Children may be concluded by the votes of their Parents. This remedy may cure some part of the mischief, but it destroys the whole cause, and at last stumbles upon the true
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original of government. For if it be allowed, that the acts of Parents bind the Children, then farewell the doctrine of the *natural freedom of mankind*; where subjection of Children to Parents is natural, there can be no natural freedom. If any reply, that not all Children shall be bound by their Parents consent, but onely those that are under age: It must be considered, that in nature there is no *nonage*; if a man be not born free, he doth not assign him any other time when he shall attain his freedom: or if he did, then Children attaining that age, should be discharged of their Parents contract. So that in conclusion, if it be imagined that the people were ever but once free from subjection by nature, it will prove a meer impossibility ever lawfully to introduce any kind of government whatsoever, without apparent wrong to a multitude of people.

It is further observable, that ordinarily Children and Servants are far a greater number than Parents and Masters; and for the major part of these to be able to vote and appoint what Government or Governours their Fathers and Masters shall be subject unto, is most unnatural, and in effect to give the Children the government over their Parents.

To all this it may be opposed, What need dispute how a people can chuse a King, since there be multitude of examples that Kings have been, and are now adays chosen by their people? The answer is, 1. The question is not of the *fact*, but of the *right*, whether it have been done by a *natural*, or by an *usurped* right. 2. Many Kings are, and have bin chosen by some small part of a

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people; but by the *the whole*, or *major part* of a Kingdom not any at all. Most have been elected by the Nobility, Great men, and Princes of the blood, as in *Poland*, *Denmarke*, and in *Sweden*; not by any *collective* or *representative* body of any Nation: sometimes a factious or seditious City, or a mutinous Army hath set up a King, but none of all those could ever prove they had *right* or just title either by *nature*, or any otherwise, for such elections. We may resolve upon these two propositions: 1. *That the people have no power or right of themselves to chuse Kings.* 2. *If they had any such right, it is not possible for them any way lawfully to exercise it.*

You will say, *There must necessarily be a right in somebody to elect, in case a King die without an Heir.* I answer, *No King can die without an Heir, as long as there is any one man living in the world.* It may be the Heir may be unknown to the people; but that is no fault in nature, but the negligence or ignorance of those whom it concerns. But if a King could die without an Heir, yet the Kingly power in that case shall not escheat to the whole people, but to the supream Heads and Fathers of Families; not as they are the *people*, but *quatenus* they are Fathers of people, over whom they have a supream power devolved unto them after the death of their sovereign Ancestor: and if any can have a right to chuse a King, it must be these Fathers, by conferring their distinct fatherly powers upon one man alone. Chief fathers in Scripture are accounted as all the people, as *all the Children of Israel*, as *all the Congregation*, as the Text plainly expounds it self, 2 *Chr.* 1. 2. where *Solomon* speaks to *All Israel*,

Israel, that is, to the Captains. the Judges, and to every Governour, the CHIEF OF THE FATHERS: and so the *Elders of Israel* are expounded to be *the chief of the Fathers of the Children of Israel*, 1 *King.* 8. 1. and the 2 *Chr.* 5. 2.

If it be objected, That Kings are not now (as they were at the first planting or peopling of the world) the Fathers of their People or Kingdoms, and that the fatherhood hath lost the right of governing; An answer is, That all Kings that now are, or ever were, are, or were either Fathers of their people, or the Heirs of such Fathers, or Usurpers of the right of such Fathers. It is a truth undeniable, that there cannot be any multitude of men whatsoever, either great, or small, though gathered together from the several corners and remotest regions of the world, but that in the same multitude, considered by it self, there is one man amongst them that in nature hath a right to be the King of all the rest, as being the next Heir to *Adam*, and all the others subject unto him: every man by nature is a King, or a Subject: the obedience which all Subjects yeild to Kings, is but the paying of that duty which is due to the supream fatherhood: Many times by the act either of an Usurper himself, or of those that set him up, the true Heir of a Crown is dispossessed, God using the ministry of the wickedest men for the removing and setting up of Kings: in such cases the Subjects obedience to the fatherly power must go along and wait upon Gods providence, who only hath right to give and take away Kingdomes, and thereby to adopt Subjects into the obedience of another fatherly power: according to

that of *Arist.* Πατερικὴ γὰρ εἶρη βέλτεται ἢ βασιλεία εἶναι. *A Monarchy or Kingdom will be a fatherly government. Ethic. l. 8. c. 12.*

However the *natural freedom of the people* be cried up as the sole means to determine the kind Government and the Governours : yet in the close, all the favourers of this opinion are constrained to grant that the obedience which is due to the fatherly power is the true and only cause of the subjection which we that are now living give to Kings, since none of us gave consent to government, but only our Fore-fathers act and consent hath concluded us.

Whereas many confess that Government only in the *abstract* is the ordinance of God, they are not able to prove any such ordinance in the Scripture, but only in the fatherly power, and therefore we find the Commandment that enjoyns obedience to superiours, given in the terms of *Honour thy Father* : so that not onely the *power or right of government*, but the *form of the power of governing*, and the *person having that power*, are all the ordinance of God : the first Father had not only simply power, but power Monarchical, as he was a Father, immediately from God. For by the appointment of God, as soon as *Adam* was created he was Monarch of the World, though he had no subjects ; for though there could not be actual government until there were Subjects, yet by the right of nature it was due to *Adam* to be Governour of his posterity : though not in *act*, yet at least in *habit*, *Adam* was a King from his Creation : And in the state of innocency he had been Governour of his Children ; for the *integrity or excellency* of the

the subjects doth not take away the *order* or *eminency* of the Governour. *Eve* was subject to *Adam* before he sinned; the Angels, who are of a pure nature, are subject to God: which confutes their saying, who in disgrace of civil Government or power say it was brought in by sin: Government as to *coactive power* was after sin, because coercion supposeth some disorder, which was not in the state of innocency: But as for *directive power*, the condition of humane nature requires it, since civil society cannot be imagined without power of Government: for although as long as men continued in the state of innocency they might not need the direction of *Adam* in those things which were *necessarily* and *morally* to be done; yet things *indifferent*, that depended meerly on their free will, might be directed by the power of *Adams* command.

If we consider the first plantations of the world which were after the building of *Babel* when the confusion of tongues was, we may find the division of the earth into distinct Kingdomes and Countries, by several families, whereof the Sons or Grand-children of *Noah* were the Kings or Governours by a fatherly right; and for the preservation of this power and right in the Fathers, God was pleased upon several Families to bestow a Language on each by it self, the better to unite it into a Nation or Kingdom; as appears by the words of the Text, *Gen. 10. These are the Families of the Sons of Noah, after their generations in their Nations, and by these were the Nations divided in the earth after the flood: Every one after HIS TONGUE, AFTER THEIR FAMILIES in their Nations.*

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The Kings of *England* have been graciously pleased to admit and accept the Commons in Parliament as the representees of the Kingdom, yet really and truly they are not the representative body of the whole Kingdom.

The commons in Parliament are not the representative body of the whole Kingdom; they do not represent the King, who is the head and principal member of the Kingdom; nor do they represent the Lords, who are the nobler and higher part of the body of the Realm, and are personally present in Parliament, and therefore need no representation. The Commons only represent a part of the lower or inferior part of the body of the People, which are the Free-holders worth 40 s. by the year, and the Commons or Free-men of Cities and Burroughs, or the *major part* of them. All which are not one quarter, nay, not a tenth part of the Commons of the Kingdom; for in every Parish, for one Free-holder there may be found ten that are no Free-holders: and anciently before Rents were improved, there were nothing neer so many Free-holders of 40 s. by the year as now are to be found.

The scope and Conclusion of this discourse and Argument is, That the people taken in what notion or sense soever, either *diffusively*, *collectively*, or *representatively*, have not, nor cannot exercise any right or power of their own by nature, either in chusing or in regulating Kings. But whatsoever power any people doth lawfully exercise, it must receive it from a supream power on earth, and practice it with such limitations as that superior power shall appoint. To return to our Author.

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He divides Monarchy into $\left\{ \begin{array}{l} \text{Absolute,} \\ \text{Limited,} \end{array} \right.$

Absolute Monarchy (saith he) is, when the P.6.
Sovereignty is so fully in one, that it hath no
limits or bounds under God but his own will. This
definition of his I embrace, And as before I charg-
ed our Author for not giving us a definition of
Monarchy in general, so I now note him for not
affording us any definition of any other particular
kind of Monarchy but onely of absolute: it may
peradventure make some doubt that there is no
other sort but only that which he calls *absolute*.

Concerning *absolute Monarchy*, he grants, that
such were the antient Eastern Monarchies, and that of the
Turk and Persian at this day. Hercin he saith very true.
And we must remember him, though he do not men-
tion them, that the Monarchs of *Judab* and *Israel*
must be comprehended under the number of those he
calls the *Eastern Monarchies*: and truly if he had
said that all the antient Monarchies of the world
had been absolute, I should not have quarrel'd at him,
nor do I know who could have disproved him.

Next it follows, that *Absolute Monarchy* is, when
a people are absolutely resigned up, or resign up them-
selves to be governed by the will of One man Where
men put themselves into this utmost degree of subjection
by oath and contract, or are born and brought unto it
by Gods providence. In both these places he ac-
knowledgeth there may be other means of obtain-
ing a Monarchy, besides the contract of a Nation or
peoples resigning up themselves to be governed,
which is contrary to what he after saies,
that the sole mean or root of all Sovereignty, is P.12.
the consent and fundamental contract of a Na-
tion of men. More-

Moreover, the Author determines, that *Absolute Monarchy is a lawful government, and that men may be born and brought unto it by Gods providence; it binds them, and they must abide it, because an oath to a lawful thing is obligatory.* This Position of his I approve, but his Reason doth not satisfy; for men are bound to obey a lawful Governour, though neither they nor their Ancestors ever took oath.

Then he proceeds, & confesseth that in *Rom. P.7. 13. the power which then was, was Absolute: yet the Apostle not excluding it, calls it Gods ordinance, and commands subjection to it. So Christ commands Tribute to be paid, and pays it himself; yet it was an arbitrary tax, the production of an absolute power.* These are the loyal expressions of our Author touching *absolute* or *arbitrary* Monarchy. I do the rather mention these passages of our Author, because very many in these days do not stick to maintain, that an arbitrary or Absolute Monarch not limited by law, is all one with a Tyrant; and to be governed by one mans will, is to be made a slave. It is a question whether our Author be not of that minde, when he saith, *absolute subjection is servitude*: and thereupon a late friend to limited Monarchy affirms in a *P.54.* discourse upon the question in debate between the King and Parliament, That *to make a King by the standard of Gods word, is to make the Subjects slaves for conscience sake.* A hard saying, and I doubt whether he that gives this censure can be excused from blasphemy. It is a bold speech, to condemn all the Kings of *Judah* for Tyrants, or to say all their Subjects were slaves. But

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certainly the man doth not know neither what a Tyrant is, or what a Slave is: indeed the words are frequent enough in every mans mouth, and our old English Translation of the Bible useth sometimes the word *Tyrant*; but the Authors of our new Translation have been so careful, as not once to use the word, but onely for the proper name of a man, *Act. 19. 9.* because they find no Hebrew word in the Scripture to signifie a *Tyrant* or a *Slave*. Neither *Aristotle*, *Bodin*, nor Sir *Walter Rawleigh*, (who were all men of deep judgement) can agree in a definition or description of *Tyranny*, though they have all three laboured in the point. And I make some question whether any man can possibly describe what a Tyrant is, and then tell me any one man that ever was in the world that was a Tyrant according to that description.

I return again to our Treatise of Monarchy, where I find three DEGREES of absolute Monarchy.

1. *Where the Monarch, whose will is the law, doth set himself no law to rule by, but by commands of his own judgement as he thinks fit.*

2. *When he sets a law by which he will ordinarily govern, reserving to himself a liberty to vary from it as oft as in his discretion he thinks FIT; and in this the Sovereign is as free as the former.*

3. *Where he not onely sets a rule, but promiseth in many cases not to alter it; but this promise or engagement is an after-condescendence or act of grace, not dissolving the absolute Oath of subjection which went before it.*

For the first of these three, there is no question but it is a pure absolute Monarchy; but as for the

the other two, though he say *they be absolute*, yet in regard they set themselves limits or laws to govern by, if it please our Author to term them *limited Monarchs*, I will not oppose him; yet I must tell him, that his third degree of absolute Monarchy is such a kind, as I believe, never hath been, nor ever can be in the world. For a Monarch to promise and engage in many cases not to *alter a law*, it is most necessary that those many cases should be particularly expressed at the bargain making. Now he that understands the nature and condition of all *humane laws*, knows that particular cases are infinite, and not comprehensible within any rules or laws: and if many cases should be comprehended, and many omitted, yet even those that were comprehended would admit of variety of interpretations and disputations; therefore our Author doth not, nor can tell us of any such reserved cases promised by any Monarch.

Again, where he saith, *An after-condescent or Act of grace doth not dissolve the absolute Oath of subjection which went before it*; though in this he speak true, yet still he seems to insinuate, that *an Oath onely binds to subjection*, which Oath, as he would have us believe, was at first *arbitrary*: whereas Subjects are bound to obey Monarchs though they never *take oath of subjection*, as well as children are bound to obey their parents, though they never swear to do it.

Next, his distinction between *the rule of*
 P.7. *power, and the exercise of it*, is vain; for *to rule,*
 P.1. *is to exercise power*: for himself saith, that
Government is potestatis exercitium, the exercise of a moral power. Lastily,

* Lastly, whereas our Author saith, *a Monarch cannot break his promise without sin*; let me add, that if the safety of the people, *salus populi*, require a breach of the Monarchs promise, then the sin, if there be any, is rather in the *making*, than *breaking of the promise*; the *safety of the people* is an exception implied in every Monarchical promise.

But it seems these three degrees of Monarchy do not satisfy our Author; he is not content to have a Monarch have a Law or rule to govern by, but he must have *this limitation or* P.12.
law to be ab externo, from somebody else, and not from the determination of the Monarchs own will; and therefore he saith, *By original constitution the society publick confers on one man a power by limited contract, resigning themselves to be governed by such a Law*: also before he told us, the P.13.
sole means of Sovereignty is the consent and fundamental contract; which consent puts them in their power, which can be no more nor other than is conveyed to them by such contract of subjection. If the sole means of a limited Monarchy be the consent and fundamental contract of a Nation, how is it that he saith, *A Monarch may be limited by after-condescence*? is an after-condescence *all one* with a fundamental contract, with original and radical constitution? why yea: he tells us *it is a secondary original constitution*, a secondary original, that is, *a second first*: And if that condescence be an act of grace, doth not this condescence to a limitation come from the free determination of the Monarchs will? If he either *formally, or virtually* (as our Author supposeth) *desert his absolute*
or

or arbitrary power which he hath by conquest, or other right.

And if it be from the free will of the Monarch, why doth he say the limitation must be *ab*
 P.8. *externo*? he told us before, that *subjection*
cannot be dissolved or lessen'd by an Act of
grace coming afterwards: but he hath better be-
 thought himself, and now he will have *acts of*
grace to be of two kinds, and the latter kind may
amount (as he saith) to a resignation of absolute Mo-
narchy. But can any man believe that a Monarch
 who by conquest or other right hath an absolute
 arbitrary power, will voluntarily resigne that ab-
 soluteness, and accept so much power onely as
 the people shall please to give him, and such laws
 to govern by as they shall make choice of? can
 he shew that ever any Monarch was so gracious or
 kind-hearted as to lay down his lawful power
 freely at his Subjects feet? is it not sufficient grace
 if such an absolute Monarch be content to set
 down a Law to himself by which he will ordina-
 rily govern, but he must needs relinquish his old
 independent commission, and take a new one from
 his Subjects, clog'd with limitations?

Finally, I observe, that howsoever our Author
 speak big of the radical, fundamental, and original
 power of the people as the root of all Sovereignty:
 yet in a better moode he will take up, and be
 contented with a Monarchy limited by an after-
 condescend and act of grace from the Monarch
 himself.

Thus I have briefly touched his grounds of
Limited Monarchy; if now we shall ask, what
 proof or examples he hath to justify his doctrine,
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he is as mute as a fish: onely *Pythagoras* hath said it, and we must believe him; for though our Author would have Monarchy to be limited, yet he could be content his opinion should be absolute, and not limited to any rule or example.

The main Charge I have against our Author now remains to be discussed; and it is this, That instead of a Treatise of *Monarchy*, he hath brought forth a Treatise of *Anarchy*, and that by his own confessions shall be made good.

First, he holds, *A limited Monarch transcends his bounds if he commands beyond the law; and the Subject legally is not bound to subjection in such cases.*

Now if you ask the Author who shall be judge whether the Monarch transcend his bounds, and of the excesses of the sovereign power;

His answer is, *There is an impossibility of constituting a judge to determine this last controversy.* — P.16.

I conceive in a limited legal Monarchy there can be no stated internal Judge P.17.

of the Monarchs actions, if there grow a fundamental variance betwixt him and the community. — There can be no Judge legal and constituted within that form of government. In these answers it appears, there is no Judge to determine the Sovereigns or the Monarchs transgressing his fundamental limits: yet our Author is very cautelous, and supposeth onely a fundamental variance betwixt the Monarch and the Community; he is ashamed to put the question home. I demand of him if there be a variance betwixt the Monarch and any of the meanest persons of the Community, who shall be the Judge? for instance, *The King commands me,*

or gives judgement against me: I reply, His commands are illegal, and his judgment not according to Law: who must judge? if the Monarch himself judge, then you destroy the frame of the State, and make it absolute, saith our Author; and he gives his reason: for, to define a Monarch to a Law, and then to make him judge of his own deviations from that Law, is to absolve him from all Law. On the other side, if any, or all the people may judge, then you put the Sovereignty in the whole body, or part of it, and destroy the being of Monarchy. Thus our Author hath caught himself in a plain dilemma: If the King be judge, then he is no limited Monarch; If the people be judge, then he is no Monarch at all. So farewell limited Monarchy, nay farewell all government if there be no Judge.

Would you know what help our Author hath found out for this mischief? First, he saith, P.14. that a Subject is bound to yield to a Magistrate, when he cannot, de jure, challenge obedience, if it be in a thing in which he can possibly without subversion, and in which his act may not be made a leading case, and so bring on a prescription against publick liberty: Again he saith, P.17. If the act in which the exorbitance or transgression of the Monarch is supposed to be, be of lesser moment, and not striking at the very being of that Government, it ought to be born by publick patience, rather than to endanger the being of the State. The like words he uses in another P.49. place, saying, If the will of the Monarch exceed the limits of the law, it ought to be submitted to, so it be not contrary to Gods Law, nor bring with it such an evil to our selves, or the publick

publick, that we cannot be accessory to it by obeying. These are but fig-leaves to cover the nakedness of our Authors limited Monarch, formed upon weak supposals in cases of lesser moment. For if the Monarch be to govern onely according to Law, no transgression of his can be of so small moment if he break the bounds of Law, but it is a subversion of the government it self, and may be made a leading case, and so bring on a prescription against publick liberty; it strikes at the very being of the Government, and brings with it such an evil, as the party that suffers, or the publick cannot be accessory to: let the case be never so small, yet if there be illegality in the act, it strikes at the very being of *limited Monarchy*, which is to be legal: unless our Author will say, as in effect he doth, That his limited Monarch must govern according to Law in great and publick matters onely, and that in smaller matters which concern private men, or poor persons, he may rule according to his own will.

Secondly, our Author tells us, *if the Monarchs act of exorbitancy or transgression be mortal, and such as suffered dissolves the frame of Government and publick liberty, then the illegality is to be set open, and redressment sought by petition; which if failing, prevention by resistance ought to be: and if it be apparent, and appeal be made to the consciences of mankind, then the fundamental Laws of that Monarchy must judge and pronounce the sentence in every mans conscience, and every man (so far as concerns him) must follow the evidence of Truth in his own soul to oppose or not to oppose, according as he can in conscience acquit or condemn the act of the governour or Monarch.*

P.17.

Whereas my Author requires, that the *destructive nature of illegal commands should be set open*: Surely his mind is, That each private man in his particular case should make a publick remonstrance to the world of the illegal act of the Monarch; and then if upon his Petition he cannot be relieved according to his desire, he ought, or it is his duty to make resistance. Here I would know, who can be the judge whether the illegality be made apparent? it is a main point, since every man is prone to flatter himself in his own cause, and to think it good, and that the wrong or injustice he suffers is apparent, when other moderate and indifferent men can discover no such thing: and in this case the judgement of the common people cannot be gathered or known by any possible means; or if it could, it were like to be various and erroneous.

Yet our Author will have *an appeal made to the conscience of all Man-kind*, and that being made, he concludes, *The fundamental Laws must judge, and pronounce sentence in every mans conscience.*

P.18. Whereas he saith, *The Fundamental Laws must judge*; I would very gladly learn of him, or of any other for him, what a Fundamental Law is, or else have but any one Law named me that any man can say is a Fundamental Law of the Monarchy. I confess he tells us, that

P.38. *the Common Laws are the foundation, and the Statute Laws are superstructive*; yet I think he dares not say that there is any one branch or part of the Common Law, but that it may be taken away by an act of Parliament: for many points of the Common Law (*de facto*) have, and

(*de*

(*de jure*) any point may be taken away. How can that be called Fundamental, which hath and may be removed, and yet the Statute-Laws stand firm and stable? It is contrary to the nature of Fundamental, for the building to stand when the foundation is taken away.

Besides, the Common Law is generally acknowledged to be nothing else but common usage or custome, which by length of time onely obtains authority: So that it follows in time after Government, but cannot go before it, and be the rule to Government, by any original or radical constitution.

Also the Common Law being unwritten, doubtful, and difficult, cannot but be an uncertain rule to govern by; which is against the nature of a rule, which is and ought to be certain.

Lastly, by making the common Law onely to be the foundation, *Magna Charta* is excluded from being a Fundamental Law, and also all other Statutes from being limitations to Monarchy, since the Fundamental Laws onely are to be judge.

Truly the conscience of all Man-kind is a pretty large Tribunal for the Fundamental Laws to pronounce sentence in. It is very much that Laws which in their own nature are dumb, and always need a Judge to pronounce sentence, should now be able to speak, and pronounce sentence themselves: such a sentence surely must be upon the hearing of one party onely; for it is impossible for a Monarch to make his defence and answer, and produce his witnesses, in every mans conscience, in each mans cause, who will but question the legality of the Monarchs Government. Cer-

tainly the sentence cannot but be unjust, where but one mans tale is heard. For all this, the conclusion is, *Every man must oppose or not oppose the Monarch according to his own conscience.* Thus at the last, every man is brought, by this Doctrine of our Authors, to be his own judge. And I also appeal to the consciences of all man-kind, whether the end of this be not utter confusion, and Anarchy.

Yet after all this, the Author saith, P.18. *This power of every mans judging the illegal acts of the Monarch, argues not a superiority of those who judge over him who is judged; and he gives a profound reason for it; his words are, It is not authoritative and civil, but moral, residing in reasonable creatures, and lawful for them to execute.* What our Author means by these words, (*not authoritative and civil, but moral*) perhaps I understand not, though I think I do; yet it serves my turn that he saith, that *resistance ought to be made, and every man must oppose or not oppose, according as in conscience he can acquit or condemn the acts of his Governour; for if it enable a man to resist and oppose his Governour, without question 'tis authoritative and civil.* Whereas he adds, that *moral judgment is residing in reasonable creatures, and lawful for them to execute;* he seems to imply, that authoritative, and civil judgement doth not reside in reasonable creatures, nor can be lawfully executed: Such a conclusion fits well with Anarchy; for he that takes away all Government, and leaves every man to his own conscience, and so makes him an independent in State, may well teach that authority resides not in reasonable creatures, nor can be lawfully executed.

I pass from his absolute and limited Monarchy, to his division or partition (for he allows no division) of Monarchy into *simple and mixed, viz. of a Monarch, the Nobility, and Community.*

Where first, observe a doubt of our Authors, *whether a firm union can be in a mixture of equality; he rather thinks there must be a primity of order in one of the three, or else there can be no unity.* He must know, that primity of order doth not hinder, but that there may be an equality of mixture, if the shares be equal; for he that hath the first share may have no more than the others: so that if he will have an inequality of mixture, a primity of share will not serve the turn: the first share must be greater or better than the others, or else they will be equal, and then he cannot call it a mixed Monarchy, where onely a primity of share in the Supream power is in one: but by his own confession he may better call it a mixed Aristocracy or mixed Democracy, than a mixed Monarchy, since he tells us, *the Houses of Parliament sure have two parts of the greatest legislative authority; and if the King have but a third part, sure their shares are equal.* P. 25. P. 56.

The first step our Author makes, is this, *The sovereign power must be originally in all three, next he finds, that if there be an equality of shares in three Estates, there can be no ground to denominate a Monarch; and then his mixed Monarch might be thought but an empty title: Therefore in the third place he resolves us, that to save all, A power must be sought out wherewith the Monarch must be invested, which is not so great as to destroy the mixture, nor so titular as to destroy the* P. 25.

Monarchy; and therefore he conceives it may be in these particulars.

First, *a Monarch in a mixed Monarchy*
 P.26. *may be said to be a Monarch* (as he conceives) *if he be the head and fountain of the power which governs and executes the established Laws;* that is, a man may be a Monarch, though he do but give power to others to govern and execute the established Laws: thus he brings his Monarch one step or peg lower still than he was before: at first he made us believe his Monarch should have the supream power, which is the legislative; then he falls from that, and tells us, A limited Monarch must govern according to Law onely; thus he is brought from the legislative to the gubernative or executive power onely; nor doth he stay here, but is taken a hole lower, for now he must not govern, but *he must constitute Officers to govern by Laws;* if chusing Officers to govern be governing, then our Author will allow his Monarch to be a Governour, not else: and therefore he that divided *Supream power* into legislative and gubernative, doth now divide it into legislative, and *power of constituting Officers* for governing by Laws; and *this he saith is left to the Monarch.* Indeed you have left him a fair portion of power, but are we sure he may enjoy this? it seems our Author is not confident in this neither, and some others do deny it him: our Author speaking of the government of this Kingdome, saith, *The*
 P.38. *choice of the Officers is intrusted to the judgment of the Monarch for ought I know:* he is not resolute in the point; but for ought he knows, and for ought I know, his Monarch
 is

is but titular, an empty title, certain of no power at all.

The power of chusing Officers onely, is the basest of all powers. *Aristotle* (as I remember) saith, *The common people are fit for nothing but to chuse Officers, and to take accounts*: and indeed, in all popular governments the multitude perform this work: and this work in a King puts him below all his Subjects, and makes him the onely subject in a Kingdom, or the onely man that cannot Govern: there is not the poorest man of the multitude but is capable of some Office or other, and by that means may sometime or other perhaps govern according to the Laws; onely the King can be no Officer, but to chuse Officers; his Subjects may all Govern, but he may not.

Next, I cannot see how in true sence our Author can say, *his Monarch is the head and fountain of power*, since his doctrine is, that in a limited Monarchy, *the publick society by original constitution confer on one man power*: is not then the publick society the head and fountain of power, and not the King?

Again, when he tells us of his Monarch, that *both the other States, as well conjunctim as divisim, be his sworn subjects, and owe obedience to his commands*: he doth but flout his poor Monarch; for why are they called his Subjects and his Commons? he (without any complement) is their Subject; for they, as Officers, may govern and command according to Law: but he may not, for he must judge by his judges in Courts of Justice onely: that is, he may not judge or govern at all.

2. As

2. As for the second particular, *The sole or chief power in capacitating persons for the Supream power.* And

3. As to this third particular, *The power of convocating such persons*, they are both so far from making a Monarch, that they are the onely way to make him none, by choosing and calling others to share in the Supream power.

4. Lastly, concerning *his Authority being the last and greatest in the establishing every Act*, it makes him no Monarch, except he be sole that hath that Authority; neither his *primity* of share in the Supream power, nor *his Authority being last*, no, nor *his having the greatest Authority*, doth make him a Monarch, unless he have that Authority alone.

Besides, how can he shew that in his mixed Monarchy the Monarchs power is the greatest? The greatest share that our Author allows him in the Legislative power, is a Negative voice, and the like is allowed to the Nobility and Commons: And truly, a Negative voice is but a base term to express a Legislative power; a Negative voice is but a privative power, or indeed, no power at all to do any thing, onely a power to hinder an Act from being done.

Wherefore I conclude, not any of his four,
P.26. nor all of them put into one person, makes the State Monarchical.

This mixed Monarchy, just like the limited, ends in confusion and destruction of all Government: you shall hear the Authors confession, *That*
P.28. *one inconvenience must necessarily be in all mixed Governments, which I shewed to be in limited Governments; there can be no constituted legal Authoritative Judge of the Fundamental Controversies arising, between the three Estates: If such do rise, it is the*

the fatal disease of those Governments, for which no salve can be applyed. It is a case beyond the possible provision of such a Government; of this question there is no legal judge. The accusing side must make it evident to every mans Conscience. — The appeal must be to the community, as if there were no Government; and as by evidence Consciences are convinced, they are bound to give their assistance. The wit of man cannot say more for Anarchy.

Thus have I picked out the flowers out of his Doctrine about limited Monarchy, and presented them with some brief Annotations; it were a tedious work to collect all the learned contradictions, and ambiguous expressions that occur in every page of his Platonick Monarchy; the Book hath so much of fancy, that it is a better piece of Poetry than Policy.

Because many may think, that the main Doctrine of *limited* and *mixed* Monarchy may in it self be most authentical, and grounded upon strong and evident reason, although our Author perhaps have failed in some of his expressions, and be liable to exceptions: Therefore I will be bold to enquire, whether *Aristotle* could find either reason or example, of a *limited* or *mixed* Monarchy; and the rather, because I find our Author altogether insists upon a rational way of justifying his opinion. No man I think will deny, but that *Aristotle* was sufficiently curious in searching out the several forms of Common-wealths and Kingdoms; yet I do not find, that he ever so much as dreamed of either a *limited* or *mixed* Monarchy. Several other sorts of Monarchies he reckons up: in the Third Book of his Politicks, he spends three whole Chapters

ters together, upon the several kinds of Monarchy.

First, in his fourteenth Chapter he mentions four kinds of Monarchy.

The Laconique or Lacedemonian.

The Barbarique.

The Æsymnetical.

The Heroique.

The Laconique or Lacedemonian King, (saith he) *bad onely Supream power when he was out of the bounds of the Lacedemonian Territories; then he bad absolute power, his Kingdom was like to a perpetual Lord General of an Army.*

The Barbarique King (saith Aristotle) *bad a power very near to Tyranny; yet they were lawful and Paternal, because the Barbarians are of a more servile nature than the Grecians, and the Asiaticques than the Europeans; they do willingly, without repining, live under a Masterly Government; yet their Government is stable and safe, because they are Paternal and lawful Kingdoms, and their Guards are Royal and not Tyrannical: for Kings are guarded by their own Subjects, and Tyrants are guarded by Strangers.*

The Æsymnetical King (saith Arist.) *in old time in Greece, was an Elective Tyrant, and differed onely from the Barbarian Kings, in that he was Elective and not Paternal; these sorts of Kings, because they were Tyrannical, were Masterly; but because they were over such as voluntarily Elected them, they were Regal.*

The Heroique were those (saith Aristotle) *which flourished in the Heroical times, to whom the people did willingly obey; and they were Paternal and lawful, because these Kings did deserve well of the multitude,*

either

either by teaching them Arts, or by Warring for them, or by gathering them together when they were dispersed, or by dividing Lands amongst them: these Kings had Supreme power in War, in Sacrifices, in Judicature.

These four sorts of Monarchy hath Aristotle thus distinguished, and after sums them up together, and concludes his Chapter as if he had forgot himself, and reckons up a fifth kind of Monarchy; which is, saith he, *When one alone hath Supream power of all the rest: for as there is a domestical Kingdom of one house, so the Kingdom of a City, or of one or many Nations, is a Family.*

These are all the sorts of Monarchy that Aristotle hath found out, and he hath strained hard to make them so many: first, for his Lacedemonian King, himself confesseth that he was but a kind of Military Commander in War, and so in effect no more a King than all Generals of Armies: And yet this No-king of his was not limited by any Law, nor mixed with any companions of his Government: when he was in the Wars out of the Confines of Lacedemon, he was, as Aristotle styles him, *Ἀντιβασιλεύς* of full and absolute command, no Law, no companion to govern his Army but his own will.

Next, for Aristotles *Æsymmetrical* King, it appears, he was out of date in Aristotles time, for he saith, he was amongst the antient Greeks, *ὡς τότε ἀρχαῖος* EN. AR. III. Aristotle might well have spared the naming him, (if he had not wanted other sorts) for the honour of his own Nation: for he that but now told us the Barbarians were of a more servile nature than the Grecians, comes here, and tells us, that these old Greek Kings were Elective Tyrants. The Barbarians did but suffer Tyrants in shew, but the old
Gre-

Grecians chose Tyrants indeed ; which then must we think were the greater slaves, the *Greeks* or the *Barbarians* ? Now if these sorts of Kings were Tyrants, we cannot suppose they were limited either by Law, or joyned with companions : Indeed *Arist.* saith, some of these Tyrants were limited to certain times and actions, for they had not all their power for term of life, nor could meddle but in certain businesses ; yet during the time they were Tyrants, and in the actions whereto they were limited, they had absolute power to do what they list according to their own will, or else they could not have been said to be Tyrants.

As for *Aristotles Heroick King*, he gives the like note upon him, that he did upon the *Æsymnet*, that he was in old time *ἡρώδης βασιλεὺς* in the Heroick times. The thing that made these Heroical Kingdoms differ from other sorts of Kingdoms, was only the means by which the first Kings obtained their Kingdoms, and not the manner of Government, for in that they were as absolute as other Kings were, without either limitation by Law, or mixture of companions.

Lastly, as for *Arist. Barbarick* sort of Kings, since he reckoned all the world *Barbarians* except the *Grecians*, his *Barbarick King* must extend to all other sorts of Kings in the world, besides those of *Greece*, and so may go under *Aristotles* fifth sort of Kings, which in general comprehends all other sorts, and is no special form of Monarchy.

Thus upon a true accompt it is evident, that the five several sorts of Kings mentioned by *Aristotle*, are at the most but different and accidental means of the first obtaining or holding of Monarchies,
and

and not real or essential differences of the manner of Government, which was always absolute, without either limitation or mixture.

I may be thought perhaps to mistake, or wrong *Aristotle*, in questioning his diversities of Kings; but it seems *Aristotle* himself was partly of the same mind; for in the very next Chapter, when he had better considered of the point, he confessed, that to speak the truth, there were almost but two sorts of Monarchies worth the considering, that is, his first or Lacedemonian sort, and his fifth or last sort, where one alone hath Supream power over all the rest: thus he hath brought his five sorts to two. Now for the first of these two, his Lacedemonian King, he hath confessed before, that he was no more than a Generalissimo of an Army, and so upon the matter no King at all: and then there remains onely his last sort of Kings; where one alone hath the Supream power. And this in substance is the final resolution of *Aristotle* himself: for in his sixteenth Chapter, where he delivers his last thoughts touching the kinds of Monarchy, he first dischargeth his Lacedemonian King from being any sort of Monarchy, and then gives us two exact rules about Monarchy; and both these are pointblank against limited and mixed Monarchy; therefore I shall propose them to be considered of, as concluding all Monarchy to be absolute and Arbitrary.

1. The one Rule is, that he that is said *Arist.*
to be a King according to Law, is no sort *pol. l. 3.*
of Government or Kingdom at all: *ὁ ἐν νόμῳ* c. 16.
βασιλεὺς οὐκ ἐστὶν εἰς τὸ πολιτεύειν.

2. The second rule is, that a true King is he that
ruleth all according to his own will, *καὶ τὸν αὐτοῦ βούλον.*

This

This latter frees a Monarch from the mixture of partners or sharers in Government, as the former rule doth from limitation by Laws.

Thus in brief I have traced *Aristotle* in his crabbed and broken passages, touching diversities of Kings; where he first finds but four sorts, and then he stumbles upon a fifth; and in the next Chapter contents himself onely with two sorts of Kings, but in the Chapter following concludes with one, which is the true perfect Monarch, who rules all by his own will: in all this we find nothing for a regulated or mixed Monarchy, but against it.

Moreover, whereas the Author of the Treatise of Monarchy affirms it as a prime principle, *That all Monarchies, (except that of the Jews) depend upon humane designment, when the consent of a society of men, and a fundamental contract of a Nation, by original or radical constitution confers power*; He must know that *Arist.* searching into the original of Government, shews himself in this point a better Divine than our Author; and as if he had studied the Book of *Genesis*, teacheth, That Monarchies fetch their Pedigree from the right of Fathers, and not from the gift or contract of people; his words may thus be Englished. *At the first, Cities were Governed by Kings, and so even to this day are Nations also: for such as were under Kingly Government did come together; for every House is governed by a King, who is the eldest; and so also Colonies are governed for kindred sake.* And immediately before, he tells us, *That the first society made of many Houses is a Village, which naturally seems to be a Colony of a House, which some call foster-brethren, or Children, and Childrens Children.*

So

So in conclusion we have gained *Aristotles* judgment in three main and essential points.

1. *A King according to Law makes no kind of Government.*

2. *A King must rule according to his own will.*

3. *The Original of Kings, is from the right of Fatherhood.*

What *Aristotles* judgment was two thousand years since, is agreeable to the Doctrine of the great modern Politician *Bodin*: Hear him touching limited Monarchy: *Unto Majesty or Sovereignty* (saith he) *belongeth an absolute power, not subject to any Law* — Chief power given unto a Prince with condition, is not properly Sovereignty, or power absolute, except such conditions annexed to the Sovereignty, be directly comprehended within the Laws of God and Nature. — *Albeit by the sufferance of the King of England, controversies between the King and his people are sometimes determined by the high Court of Parliament, and sometimes by the Lord Chief Justice of England; yet all the Estates remain in full subjection to the King, who is no ways bound to follow their advice, neither to consent to their requests.* — It is certain, that the Laws, Priviledges, and Grants of Princes, have no force but during their life, if they be not ratified by the express consent, or by sufferance of the Prince following, especially Priviledges. — Much less should a Prince be bound unto the Laws he maketh himself; for a man may well receive a Law from another man, but impossible it is in nature for to give a Law unto himself, no more than it is to command a mans self in a matter depending of his own will. The Law saith, *Nulla obligatio consistere potest, quæ à voluntate promittentis statum capit.* The Sovereign Prince may derogate unto

the Laws that he hath promised and sworn to keep, if the equity thereof be ceased; and that of himself, without the consent of his Subjects. — The Majesty of a true Sovereign Prince is to be known, when the Estates of all the people assembled, in all humility present their requests and supplications to their Prince, without having power in any thing, to command, determine, or give voice, but that that which it pleaseth the King to like or dislike, to command or bid, is holden for Law: wherein they which have written of the duty of Magistrates have deceived themselves, in maintaining that the power of the people is greater than the Prince; a thing which causeth oft true Subjects to revolt from their obedience to their Prince, and ministreth matter of great troubles in Common-wealths; of which their opinion there is neither reason nor ground: for if the King be subject unto the Assemblies and Decrees of the people, he should neither be King nor Sovereign, and the Common-wealth neither Realm nor Monarchy, but a mere Aristocracie. — So we see the principal point of Sovereign Majesty, and absolute power, to consist principally in giving Laws unto the Subjects in general without their consent. Bodin de Rep. l. 1. c. 8.

To confound the state of Monarchy with the Popular or Aristocratical estate, is a thing impossible, and in effect incompatible, and such as cannot be imagined: for Sovereignty being of it self indivisible, how can it at one and the same time be divided betwixt one Prince, the Nobility, and the people in common? The first mark of Sovereign Majesty, is to be of power to give Laws, and to command over them unto the Subjects; and who should those Subjects be, that should yield their obedience to the Law, if they should have also power to make the Laws? who should be he that could give the Law? being

being himself constrained to receive it of them, unto whom himself gave it? so that of necessity we must conclude, That as no one in particular hath the power to make the Law in such a State, that then the State must needs be a State popular.—Never any Commonwealth hath been made of an Aristocracy and popular Estate, much less of the three Estates of a Commonwealth.—Such States wherein the rights of Sovereignty are divided, are not rightly to be called Commonwealths, but rather the corruption of Commonwealths, as Herodotus has most briefly but truly written.—Commonwealths which change their state, the Sovereign right and power of them being divided, find no rest from Civil wars and broils, till they again recover some one of the three Forms, and the Sovereignty be wholly in one of the states or other. Where the rights of the Sovereignty are divided betwixt the Prince and his Subjects, in that confusion of state there is still endless stir and quarrels for the superiority, until that some one, some few, or all together, have got the Sovereignty. Id. lib. 2. c. 1.

This Judgment of Bodin's touching Limited and Mixed Monarchy, is not according to the mind of our Author, nor yet of the Observator, who useth the strength of his Wit to overthrow Absolute and Arbitrary Government in this Kingdom; and yet in the main body of his discourse, lets fall such Truths from his pen, as give a deadly wound to the Cause he pleads for, if they be indifferently weighed and considered. I will not pick a line or two here and there to wrest against him, but will present a whole Page of his Book, or more together, that so we may have an entire prospect upon the Observators mind: *Without society* (saith the

Observator) men could not live; without Laws men could not be sociable; and without Authority somewhere to judge according to Law, Law was vain: It was soon therefore provided, that Laws according to the dictate of Reason, should be ratified by common consent; when it afterward appeared, that man was yet subject to unnatural destruction, by the Tyranny of entrusted Magistrates, a mischief almost as fatal, as to be without all Magistracy. How to provide a wholesome remedy therefore, was not so easie to be invented: it was not difficult to invent Laws for the limiting of Supream Governours; but to invent how those Laws should be executed, or by whom interpreted, was almost impossible. *Nam quis Custodiet ipsos Custodes*, to place a Superiour above a Supream, was held unnatural; yet what a lifeless thing would Law be without any Judge to determine and force it? If it be agreed upon, that limits should be prefixed to Princes and Judges to decree according to those limits, yet another inconvenience will presently affront us: for we cannot restrain Princes too far, but we shall disable them from some good: long it was ere the world could extricate it self out of all these extremities, or find out an orderly means whereby to avoid the danger of unbounded Prerogative on this hand, and to excessive liberty on the other; and scarce has long experience yet fully satisfied the minds of all men in it. In the Infancy of the world, when man was not so artificial and obdurate in cruelty and oppression as now, and Policy most rude, most Nations did choose rather to subject themselves to the meer discretion of their Lords, than rely upon any limits; and so be ruled by Arbitrary Edicts, than written Statutes. But since Tyranny being more exquisite, and Policy more perfect, especially where Learning and Religion flourish,

few

few Nations will endure the thraldome which usually accompanies unbounded and unconditionate Royalty; Yet long it was ere the bounds and conditions of Supreme Lords was so wisely determined, or quietly conserved as now they are: for at first, when as Ephori, Tribuni, Curatores, &c. were erected to poise against the scale of Sovereignty, much blood was shed about them, and States were put into new broils by them, and some places the remedy proved worse than the disease. In all great distresses, the body of the people were ever constrained to rise, and by force of the major party to put an end to all intestine strifes, and make a redress of all publick grievances: But many times calamities grew to a strange height, before so cumbersome a body could be raised; and when it was raised, the motions of it were so distracted and irregular, that after much spoil and effusion of blood, sometimes only one Tyranny was exchanged for another, till some was invented to regulate the motions of the peoples moliminous body. I think Arbitrary rule was most safe for the World: but Now, since most Countries have found an art and peaceable order for publick Assemblies, whereby the people may assume its own power to do it self right, without disturbance to it self or injury to Princes, he is very unjust that will oppose this art or order. That Princes may not be Now beyond all limits and Laws, nor yet to be tyed upon those limits by any private parties; the whole Community, in its underived Majesty, shall convene to do justice; and that the Convention may not be without intelligence, certain times, and places, and forms, shall be appointed for its reglement; and that the vastness of its own bulk may not breed confusion, by vertue of election and representation, a few shall act for many, the wise shall consent for the simple,

the vertue of all shall redound to some, and the prudence of some shall redound to all; and surely as this admirably-composed Court, which is now called a Parliament, is more regularly and orderly formed, than when it was called mickle Synod of Wittenagemot, or when this real body of the people did throng together at it: so it is not yet perhaps without some defects, which by art and policy might receive farther amendment: some divisions have sprung up of late between both Houses, and some between the King and both Houses, by reason of incertainty of Jurisdiction; and some Lawyers doubt how far the Parliament is able to create new forms and presidents, and has a Jurisdiction over it self; all these doubts would be solemnly solved: but in the first place, the true priviledges of Parliament belonging not only to the being and efficacy of it, but to the honour and complement of it, would be clearly declared: for the very naming of priviledges of Parliament, as if they were chimera's to the ignorant sort, and utterly unknown unto the Learned, hath been entertained with scorn since the beginning of this Parliament,

In this large passage taken out of the Observator which concerns the Original of all Government, two notable Propositions may be principally observed.

First, our Observator confesseth arbitrary or absolute government to be the first, and the safest government for the world.

Secondly, he acknowledgeth that the Jurisdiction is uncertain, and the priviledges not clearly declared of limited Monarchy.

These two evident truths delivered by him, he labours mainly to disguise. He seems to insinuate that Arbitrary Government was but in the infancy of the

the World, for so he terms it; but if we enquire of him, how long he will have this infancy of the world to last, he grants it continued above three thousand years, which is an unreasonable time for the world to continue under-age: for the first opposers he doth finde of Arbitrary power, were the *Ephori, Tribuni, Curatores, &c.* The *Ephori* were above three thousand years after the Creation, and the *Tribuni* were later; as for his *Curatores*, I know not whom he means, except the *Master of the Court of Wards*, I cannot English the word *Curator* better. I do not believe that he can shew that any *Curatores* or *&cetera's* which he mentions were so antient as the *Ephori*. As for the *Tribuni*, he mistakes much if he thinks they were erected to limit and bound Monarchy; for the State of *Rome* was at the least *Aristocratical* (as they call it) if not popular, when *Tribunes* of the people were first hatched. And for the *Ephori*, their power did not limit or regulate Monarchy, but quite take it away; for a *Lacedemonian King* in the judgment of Aristotle was no King indeed, but in name onely, as *Generalissimo* of an Army; and the best Politicians reckon the *Spartan Commonwealth* to have been *Aristocratical*, and not *Monarchical*; and if a limited Monarchy cannot be found in *Lacedemon*, I doubt our *Observator* will hardly find it any where else in the whole World; and in substance he confesseth as much, when he saith, *Now most Countries have found out an art and peaceable order for publick Assemblies*; as if it were a thing but new done, and not before; for so the word *Now* doth import.

The *Observator* in confessing the *Jurisdiction* to be uncertain, and the *priviledges* undetermined of that

Court that should bound and limit Monarchy, doth in effect acknowledge there is no such Court at all: for every Court consists of Jurisdictions and Priviledges; it is these two that create a Court, and are the essentials of it: If the admirably composed Court of Parliament have some defects which may receive amendment, as he saith, and if those defects be such as cause divisions both between the Houses, and between the King and both Houses, and these divisions be about so main a matter as Jurisdictions and Priviledges, and power to create new Priviledges, all which are the Fundamentals of every Court, (for until they be agreed upon, the act of every Court may not onely be uncertain, but invalid, and cause of tumults and sedition:) And if all these doubts and divisions have need to be solemnly solved, as our Observator confesseth: Then he hath no reason at all to say, that Now the conditions of Supream Lords are wisely determined and quietly conserved, or that Now most Countries have found out an art, and peaceable order for publick affairs, whereby the people may resume its own power to do it self right without injury unto Princes: for how can the underived Majesty of the people by assuming its own power, tell how to do her self right, or how to avoid doing injury to the Prince, if her Jurisdiction be uncertain, and Priviledges undetermined?

He tells us *Now most Countries have found an art, and peaceable order for publick Assemblies: and to the intent that Princes may not be Now beyond all limits and Laws, the whole community in its underived Majesty shall convene to do Justice. But, he doth not name so much as one Country or Kingdome that hath found out this art, where the whole*

whole Community in its underived Majesty did ever convene to do Justice. I challenge him, or any other for him, to name but one Kingdome that hath either *Now* or heretofore found out this art or peaceable order. We do hear a great rumor in this age, of moderated and limited Kings; *Poland, Sweden, and Denmark*, are talked of for such; and in these Kingdomes, or nowhere, is such a moderated Government, as our *Observer* means, to be found. A little enquiry would be made into the manner of the Government of these Kingdoms: for these Northern people, as *Bodin* observeth, *breath after liberty*.

First for *Poland*, *Boterus* saith, that the Government of it is elective altogether, and representeth rather an *Aristocracie* than a Kingdome: the Nobility, who have great authority in the Diets, choosing the King, and limiting His Authority, making His Sovereignty but a slavish Royalty: these diminutions of Regality began first by default of King *Lewis*, and *Jagello*, who to gain the succession in the Kingdom contrary to the Laws, one for his daughter, and the other for his son, departed with many of his Royalties and Prerogatives, to buy the voices of the Nobility. The French Author of the book called *the Estates of the world*, doth inform us that the Princes Authority was more free, not being subject to any Laws, and having absolute Power, not onely of their estates, but also of life and death. Since Christian Religion was received, it began to be moderated, first by holy admonitions of the Bishops and Clergy, and then by services of the Nobility in war: Religious Princes gave many Honours, and many liberties to the Clergy and Nobility, and quit much of their Rights, the
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which their successors have continued. The superiour dignity is reduced to two degrees, that is, the Palatinate and the Chastelleine, for that Kings in former times did by little and little call these men to publick consultations, notwithstanding that they had absolute power to do all things of themselves, to command, dispose, recompence, and punish, of their own motions: since they have ordained that these Dignities should make the body of a Senate, the King doth not challenge much right and power over His Nobility, nor over their estates, neither hath he any over the Clergy. And though the Kings Authority depends on the Nobility for His election, yet in many things it is absolute after He is chosen: He appoints the Diets at what time and place He pleaseth; He chooseth Lay-Councillors, and nominates the Bishops, and whom He will have to be His Privy Council: He is absolute disposer of the Revenues of the Crown: He is absolute establisher of the Decrees of the Diets: It is in His power to advance and reward whom he pleaseth. He is Lord immediate of His Subjects, but not of His Nobility: He is Sovereign Judge of his Nobility in criminal causes. The power of the Nobility daily increaseth, for that in respect of the Kings election, they neither have Law, rule, nor form to do it, neither by writing nor tradition. As the King governs His Subjects which are immediately His, with absolute Authority; so the Nobility dispose immediately of their vassals, over whom every one hath more than a Regal power, so as they intreat them like slaves. There be certain men in Poland who are called EARTHLY MESSENGERS or Nuntio's, they are as it were Agents of Jurisdictions or Circles of the Nobility: these have a certain Authority, and, as Bo-

terus

terus saith, in the time of their Diets these men assemble in a place near to the Senate-House, where they chuse two Marshalls, by whom (but with a Tribune-like authority) they signifie unto the Council what their requests are. Not long since, their authority and reputation grew so mightily, that they now carry themselves as Heads and Governours, rather than officers and ministers of the publick decrees of the State: One of the Council refused his Senators place, to become one of these officers. Every Palatine, the King requiring it, calls together all the Nobility of His Palatinate; where having propounded unto them the matters whereon they are to treat, and their will being known, they chuse four or six out of the company of the **EARTHLY MESSENGERS**; these deputies meet and make one body, which they call the order of Knights.

This being of late years the manner and order of the government of Poland, it is not possible for the *Observer* to finde among them that the whole Community in its underived Majesty doth ever convene to do Justice: nor any election or representation of the Community, or that the people assume its own power to do it self right. The **EARTHLY MESSENGERS**, though they may be thought to represent the Commons, and of late take much upon them, yet they are elected and chosen by the Nobility, as their agents and officers. The Community are either vassals to the King, or to the Nobility, and enjoy as little freedom or liberty as any Nation. But it may be said perhaps, that though the Community do not limit the King, yet the Nobility do, and so he is a limited Monarchy. The Answer is, that in truth, though
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the Nobility at the chusing of their King do limit his power, and do give him an Oath ; yet afterwards they have always a desire to please him, and to second his will ; and this they are forced to do, to avoid discord : for by reason of their great power, they are subject to great dissensions, not onely among themselves, but between them and the order of Knights, which are the *Earthly Messengers* : yea, the Provinces are at discord one with another : and as for Religion, the diversity of Sects in *Poland* breed perpetual jars and hatred among the people, there being as many Sects as in *Amsterdam* it self, or any popular government can desire. The danger of sedition is the cause, that though the Crown depends on the election of the Nobility ; yet they have never rejected the Kings successour, or transferred the Realm to any other family, but once, when deposing *Ladislaus* for his idleness (whom yet afterward they restored) they elected *Wencelaus* King of *Bobemia*. But if the Nobility do agree to hold their King to his conditions, which is, not to conclude any thing but by the advice of his Council of Nobles, nor to choose any wife without their leaves, then it must be said to be a Common-weal, not a Royalty ; and the King but onely the mouth of the Kingdom, or as Queen *Christina* complained, that *Her Husband was but the shadow of a Sovereign*.

Next, if it be considered how the Nobility of *Poland* came to this great power ; it was not by any original contract, or popular convention : for it is said *they have neither Law, Rule, nor Form written or unwritten, for the election of their King* ; they may thank the Bishops and Clergy : for by their holy ad-

admonitions and advice, good and Religious Princes, to shew their piety, were first brought to *give much of their Rights and Priviledges to their Subjects, devout Kings were meerly cheated of some of their Royalties.* What power soever general Assemblies of the Estates claim or exercise over and above the bare naked act of Councelling, they were first beholding to the Popish Clergy for it: it is they first brought Parliaments into request and power: I cannot finde in any Kingdom, but onely where Popery hath been, that Parliaments have been of reputation; and in the greatest times of Superstition they are first mentioned.

As for the Kingdom of *Denmarke*, I read that the Senators, who are all chosen out of the Nobility, and seldom exceed the number of 28, with the chief of the Realm, do chuse their King. They have always in a manner set the Kings eldest Son upon the Royal Throne. The Nobility of *Denmarke* withstood the Coronation of *Frederick* 1559, till he sware not to put any Noble-man to death until he were judged of the Senate; and that all Noble-men should have power of life and death over their Subjects without appeal; and the King to give no Office without consent of the Council. There is a Chancelour of the Realm, before whom they do appeal from all the Provinces and Islands, and from him to the King himself. I hear of nothing in this Kingdom that tends to Popularity; no Assembly of the Commons, no elections, or representation of them.

Sweden is governed by a King *heretofore elective*, but now made hereditary in *Gustavus* time: it is divided into Provinces: an appeal lieth from the
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Vicount of every territory to a Sovereign Judge called a *Lamen*; from the *Lamens*, to the Kings Council; and from this Council to the King himself.

Now let the *Observer* bethink himself, whether all, or any of these three Countries have found out any art at all whereby the *people or community may assume its own power*: if neither of these Kingdoms have, most Countries have not, nay none have. The people or Community in these three Realms are as absolute vassals as any in the world; the regulating power, if any be, is in the Nobility: Nor is it such in the Nobility as it makes shew for. The election of Kings is rather a Formality, than any real power: for they dare hardly chuse any but the Heir, or one of the blood Royal: if they should chuse one among the Nobility, it would prove very factious; if a stranger, odious, neither safe. For the Government, though the Kings be sworn to raign according to the Laws, and are not to do any thing without the consent of their Council in publick affairs: yet in regard they have power both to advance and reward whom they please, the Nobility and Senators do comply with their Kings. And *Boterm* concludes of the Kings of *Poland*, who seem to be most moderated, that *such as is their valour, dexterity, and wisdom, such is their Power, Authority, and Government*. Also *Bodin* saith, that *these three Kingdoms are States changable and uncertain, as the Nobility is stronger than the Prince, or the Prince than the Nobility*; and the people are so far from liberty, that he saith, *Divers particular Lords exact not onely Customs, but Tributes also; which are confirmed and grow stronger, both by long prescription of time, and use of Judgments.*

The End.

REFLECTIONS

Concerning the

ORIGINAL OF GOVERNMENT,

- Upon {
- I. Aristotle's *Politiques*.
 - II. Mr. Hobs's *Leviathan*.
 - III. Mr. Milton *against* Salmasius.
 - IV. H. Grotius *De Jure Belli*.
 - V. Mr. Hunton's *Treatise of Monarchy*.
 - VI. *Another Treatise of Monarchy*, by a
nameless Author.
-

Arist. Pol. Lib. 4.

Ἡ πρώτη πολιτεία ἐν ταῖς Ἑλλήσιν ἐξήμετο μὲν ταῖς
βασίλειαι ἐκ τῶν πολεμούντων.



L O N D O N,

Printed in the Year MDCLXXIX.

but only the Exercise of the Consular Power was suspended by a seeming humble way of *intercession* of the Tribunes ; The Consuls by their first Institution had a lawful Right to do those things, which yet they would not do by reason of the shortness of their Reigns, but chose rather to countenance their actions with the title of a Decree of the Senate (who were their private Counsel) yea, and sometimes with the Decree of the Assembly of the Centuries (who were their Public Counsel) for both the Assembling of the Senate, and of the Centuries, was at the Pleasure of the Consuls, and nothing was to be propounded in either of them, but at the Will of the Consuls : which argues a Sovereignty in them over the Senate and Centuries ; the Senate of *Rome* was like the House of Lords, the Assembly of the Tribes resembled the House of Commons, but the Assembling of the *Centuries*, was a Body composed of Lords and Commons united to Vote together.

The Tribunes of the People bore all the Sway among the Tribes, they called them together when they pleased, without any Order, whereas the Centuries were never Assembled without Ceremony, and Religious observation of the Birds by the Augurs, and by the Approbation of the Senate, and therefore were said to be *auspicata*, and *ex auctoritate Patrum*.

These things considered, it appears, that the Assembly of the Centuries was the only legitimate, and great Meeting of the People of *Rome* : as for any Assembling, or Electing of any Trustees, or Representatives of the People of *Rome*, in nature of the

the modern Parliaments, it was not in Use, or ever known in *Rome*.

Above two hundred and twenty years after the expulsion of Kings, a sullen humour took the Commons of *Rome*, that they would needs depart the City to *Janiculum*, on the other side of *Tybur*, they would not be brought back into the City, until a Law was made, That a *Plebiscitum*, or a Decree of the Commons might be observed for a Law ; this Law was made by the Dictator *Hortensius*, to quiet the Sedition, by giving a part of the Legislative Power to the Commons, in such inferiour matters only, as by Toleration and Usurpation had been practised by the Commons. I find not that they desired an Enlargement of the Points which were the Object of their Power, but of the Persons, or Nobility that should be subject to their Decrees : the great Power of making War, of creating the greater Magistrates, of judging in Capital Crimes, remained in the Consuls, with the Senate, and Assembly of the Centuries.

For further manifestation of the broken and distracted Government of *Rome*, it is fit to consider the original Power of the Consuls, and of the Tribunes of the Commons, who are ordinarily called the Tribunes of the People.

First, it is undeniable, that upon the expulsion of Kings, Kingly power was not taken away, but only made Annual and changeable between two Consuls ; who in their Turns, and by course had the Sovereignty, and all Regal power ; this appears plainly in *Livy*, who tells us, that *Valerius Publicola* being Consul, he himself alone ordained
a Law,

a Law, and then assembled a general Session.

Turentillus Arsa inveighed and complained against the Consul's Government, as being so absolute, and in Name only less odious than that of Kings, but in Fact more cruel; for instead of one Lord the City had received twain, having Authority beyond all Measure, unlimited and infinite. *Sextius* and *Licinius* complain, that there would never be any indifferent Course, so long as the Nobles kept the Sovereign Place of Command, and the Sword to strike, whiles the poor Commons have only the Buckler; their Conclusion was, that it remains, that the Commons bear the Office of Consuls too, for that were a Fortrefs of their Liberty, from that day forward, shall the Commons be Partakers of those things, wherein the Nobles now surpass them, namely Sovereign Rule and Authority.

The Law of the twelve Tables affirms, *Regis imperio duo sunt, iique Consules appellantor*. Let two have regal Power, and let them be called Consuls; also the Judgment of *Livy* is, that the Sovereign Power was translated from Consuls to Decemvirs, as before from Kings to Consuls. These are proofs sufficient to shew the Royal Power of the Consuls.

About sixteen years after the first Creation of Consuls, the Commons finding themselves much run into Debt, by wasting their Estates in following the Wars; and so becoming, as they thought, oppressed by Usury, and cast into Prison by the Judgment, and Sentence of the Consuls, they grievously complained of Usury, and of the Power of the Consuls, and by Sedition prevailed, and obtained Leave to choose among themselves Magistrates called Tribunes of the People, who by their *Intercession* might preserve the Commons from being oppressed

pressed, and suffering Wrong from the Consuls: and it was further agreed, that the Persons of those Tribunes should be sacred, and not to be touched by any. By means of this Immunity of the Bodies of the Tribunes from all Arrests or other Violence, they grew in time by Degrees to such Boldness, that by stopping the legal Proceedings of the Consuls (when they pleased to intercede) they raised such an Anarchy oft times in Government, that they themselves might act, and take upon them, what Power soever they pleased (though it belonged not to them.) This Gallantry of the Tribunes was the Cause, that the Commons of *Rome*, who were diligent Pretenders to Liberty, and the great Masters of this part of Politiques, were thought the only famous Preservers, and Keepers of the Liberty of *Rome*. And to do them right, it must be confessed, they were the only men that truly understood the Rights of a *Negative Voice*; if we will allow every man to be naturally free till they give their Consent to be bound, we must allow every particular Person a *Negative Voice*; so that when as all have equal Power, and are as it were fellow-Magistrates or Officers, each man may impeach, or stop his Fellow-Officers in their Proceedings, this is grounded upon the general Reason of all them, which have any thing in Common, where he which forbiddeth, or denyeth, hath most Right, because his Condition in that Case is better than his which commandeth, or moveth to proceed; for every Law or Command, is in it self an Innovation, and a Diminution of some part of popular Liberty; for it is no Law except it restrain Liberty; he that by his negative Voice doth forbid or hinder the Proceeding of a new Law,

Law, doth but preserve himself in that Condition of Liberty, wherein Nature hath placed him, and whereof he is in present Possession; the Condition of him thus in Possession being the better, the stronger is his Prohibition, any single man hath a juster Title to his *Negative Voice*, than any Multitude can have to their Affirmative; to say the People are free, and not to be governed, but by their own Consent, and yet to allow a major part to rule the whole, is a plain Contradiction, or a destruction of natural Freedom. This the Commons of *Rome* rightly understood, and therefore the transcendent Power of the Negative Voice of any one Tribune, being able of it self to stay all the Proceedings, not of the Consuls and Senate only, and other Magistrates, but also of the rest of his fellow-Tribunes, made them seem the powerfulest men in all *Rome*; and yet in Truth they had no Power or Jurisdiction at all, nor were they any Magistrates, nor could they lawfully call any man before them, for they were not appointed for Administration of Justice, but only to oppose the Violence, and Abuse of Magistrates, by interceeding for such as appealed, being unjustly oppressed; for which Purpose at first they sate only without the Door of the Senate, and were not permitted to come within the Doors: this Negative Power of theirs was of Force only to hinder, but not to help the Proceedings in Courts of Justice; to govern, and not to govern the People. And though they had no Power to make Laws, yet they took upon them to propound Laws, and flattered and humoured the Commons by the *Agrarian* and *Fruementarian* Laws, by the first they divided the Common fields, and conquered Lands
among

among the Common People; and by the latter, they afforded them Corn at a cheaper or lower price: by these means these Demagogues or Tribunes of the Commons led the Vulgar by the Noses, to allow whatsoever Usurpations they pleased to make in Government.

The Royal Power of the Consuls was never taken away from them by any Law that I hear of, but continued in them all the time of their pretended popular Government, to the very last, though repined at, and opposed in some particulars by the Commons.

The *No-Power*, or *Negative Power* of the Tribunes, did not long give content to the Commons, and therefore they desired, that one of the Consuls might be chosen out of the Commonalty: the eager propounding of this point for the Commons, and the diligent opposing of it by the Nobility or Senate, argues how much both parties regarded the Sovereign power of a Consul; the Dispute lasted fourscore years within two: the Tribunes pressing it upon all advantages of opportunity, never gave over till they carried it by strong hand, or stubbornness, hindring all Elections of the *Curule*, or greater Magistrates, for five years together, whereby the Nobles were forced to yield the Commons a Consul's place, or else an *Anarchy* was ready to destroy them all; and yet the Nobility had for a good while allowed the Commons *Military Tribunes with Consular Power*, which, in effect or substance, was all one with having one of the Consuls a Commoner, so that it was the bare Name of a Consul which the Commons so long strived for with the Nobility: In this contention,

some Years Consuls were chosen, some years Military Tribunes in such Confusion, that the Roman Historians cannot agree among themselves, what Consuls to assign, or name for each Year, although they have *Capitoline Tables*, *Sicilian* and *Greek Registers*, and *Kalenders*, *Fragments of Capitoline Marbles*, *linen Books or Records* to help them: a good while the Commons were content with the Liberty of having one of the Consuls a Commoner; but about fourscore years after they enjoyed this Privilege, a Desire took them to have it enacted, that a Decree of the Commons called a *plebiscitum* might be observed for a Law, *Hortensius* the Dictator yielded to enact it, thereby to bring back the Seditious Commons, who departed to *Janiculum* on the other side of *Tybur*, because they were deeply engaged in Debt in regard of long Seditions and Dissensions. The eleventh Book of *Livy*, where this Sedition is set down, is lost; we have only a touch of it in *Florus* his Epitome, and *St. Augustine* mentions the Plundering of many Houses by the Commons at their departing: this Sedition was above 220 years after the Expulsion of Kings, in all which time, the People of *Rome* got the Spoil of almost all *Italy*, and the wealth of very many rich Cities: and yet the Commons were in so great Penury, and over whelmed with Debts that they fell to plunder the rich Houses of the Citizens, which sounds not much for the Honour of a popular Government. This communicating of a legislative Power to the Commons, touching Power of enfranchising Allies, Judgments Penal, and Fines, and those Ordinances that concerned the Good of the Commons called *Plebiscita*, was a dividing
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of the Snpreme Power, and the giving a Share of it to others, as well as to the Consuls, and was in effect to destroy the legislative Power, for to have two Supremes is to have none, because the one may destroy the other, and is quite contrary to the indivisible nature of Sovereignty. The Truth is, the Consuls, having but annual Sovereignty, were glad for their own Safety, and Ease in Matters of great Importance, and Weight, to call together sometimes the Senate, who were their ordinary Council, and many times the Centuries of the People, who were their Council extraordinary, that by their Advice they might countenance, and strengthen such Actions as were full of Danger and Envy: and thus the Consuls by weakening their original Power brought the Government to Confusion, civil Diffension, and utter Ruine: so dangerous a thing it is to shew Favour to Common People, who interpret all Graces and Favours for their Rights, and just Liberties: the Consuls following the Advice of the Senate or People, did not take away their Right of Governing no more than Kings lose their Supremacy by taking Advice in Parliaments.

Not only the Consuls, but also the Pretors and Censors (two great Offices, ordained only for the ease of the Consuls, from whom an Appeal lay to the Consuls) did in many things exercise an arbitrary or legislative Power in the Absence of the Consuls, they had no Laws to limit them: for many Years after the Creation of Consuls, ten men were sent into Greece to chuse Laws; and after the 12 Tables were confirmed, whatsoever the Pretors, who were but the Consuls Substitutes, did

command, was called *jus honorarium* ; and they were wont at the Entrance into their Office to collect, and hang up for publick View, a Form of Administration of Justice which they would observe, and though the *edictum Prætoris*, expired with the Pretors Office ; yet it was called *Edictum perpetuum*.

What Peace the Low-Countries have found since their Revolt is visible ; it is near about an hundred Years since they set up for themselves, of all which time only twelve years they had a Truce with the Spaniard, yet in the next year, after the Truce was agreed upon, the War of *Juliers* brake forth, which engaged both Parties ; so that upon the matter, they have lived in a continued War, for almost 100 Years : had it not been for the Aid of their Neighbours, they had been long ago swallowed up, when they were glad humbly to offer their new hatch'd Commonweal, and themselves Vassals to the Queen of *England*, after that the French King *Hen. 3.* had refused to accept them as his Subjects ; That little Truce they had, was almost as costly as a War ; they being forced to keep about thirty thousand Souldiers continually in Garrison. Two things they say they first fought about, Religion and Taxes, and they have prevailed it seems in both, for they have gotten all the Religions in Christendome, and pay the greatest Taxes in the World ; they pay Tribute half in half for Food, and most necessary things, paying as much for Tribute as the price of the thing sold ; Excise is paid by all Retailers of Wine, and other Commodities ; for each Tun of Beer six Shillings, for each Cow for the Pail two Stivers every week : for Oxen, Horses, Sheep, and other beasts sold in the Market the

the twelfth part at least, be they never so oft sold by the year to and fro, the new Master still pays as much: they pay five Stivers for every Bushel of their own Wheat, which they use to grinde in publick Mills: These are the Fruits of the Low-Country War.

It will be said that *Venice* is a Commonwealth that enjoys Peace. She indeed of all other States hath enjoyed of late the greatest Peace; but she owes it not to her kind of Government, but to the natural Situation of the City, having such a Banck in the Sea of neer threescore Miles, and such Marshes towards the Land, as make her unapproachable by Land, or Sea; to these she is indebted for her Peace at home, and what Peace she hath abroad she buys at a dear Rate; and yet her Peace is little better than a continued War; The City always is in such perpetual Fears, that many besieged Cities are in more Security; a Senator or Gentleman dares not converse with any Stranger in *Venice*, shuns Acquaintance, or dares not own it: they are no better than Banditos to all humane Society. Nay, no People in the World live in such Jealousie one of another, hence are their intricate Solemnities, or rather Lotteries in Election of their Magistrates, which in any other Place, would be ridiculous and useless. The Senators or Gentlemen are not only jealous of the Common People, whom they keep disarmed, but of one another; they dare not trust any of their own Citizens to be a Leader of their Army, but are forced to hire, and entertain Foreign Princes for their Generals, excepting their Citizens from their Wars, and hiring others in their Places; it cannot be said, that People live

in Peace which are in such miserable Fears continually.

The *Venetians* at first were subject to the *Roman* Emperour; and for fear of the Invasion of the *Hunnes* forsook *Padua*, and other places in *Italy*; and retired with all their Substance to those Islands where now *Venice* stands: I do not read they had any Leave to desert the defence of their Prince and Countrey, where they had got their Wealth, much less to set up a Government of their own; it was no better than a Rebellion, or Revolting from the *Roman* Empire. At first they lived under a kind of *Oligarchy*, for several Islands had each a Tribune, who all met, and governed in common: but the dangerous Seditions of their Tribunes, put a necessity upon them to choose a Duke for Life, who, for many hundreds of years, had an Absolute Power, under whose Government *Venice* flourished most, and got great Victories, and rich Possessions. But by insensible degrees, the Great Council of the Gentlemen have for many years been lessening the Power of their Dukes, and have at last quite taken it away. It is a strange Errour for any man to believe, that the Government of *Venice* hath been alwayes the same that it is now: he that reads but the History of *Venice*, may find for a long time a Sovereign Power in their Dukes: and that for these last two hundred years, since the diminishing of that Power, there hath been no great Victories and Conquests obtained by that Estate.

That which exceeds admiration is, that *Contarone* hath the confidence to affirm the present Government of *Venice* to be a mixed Form of *Monarchy*, *Democratic*, and *Aristocratie*: For, whereas he makes the

the Duke to have the Person and Shew of a King ; he after confesseth, that the Duke can do nothing at all alone, and being joyned with other Magistrates, he hath no more Authority than any of them : also the power of the Magistrates is so small, that no one of them, how great soever he be, can determine of any thing of moment, without the allowance of the Council. So that this Duke is but a man dressed up in Purple, a King only in Pomp and Ornament, in Power but a Senator, within the City a Captive, without a Traytor, if he go without Leave. As little reason is there to think a Popular Estate is to be found in the great Council of *Venice*, or *S. P. Q. V.* for it doth not consist of the fortieth part of the People, but only of those they call Patritians or Gentlemen ; for the Commons, neither by themselves, nor by any chosen by them for their Representatives, are admitted to be any part of the Great Council : and if the Gentlemen of *Venice* have any Right to keep the Government in their own hands, and to exclude the Commons, they never had it given them by the People, but at first were beholding to *Monarchy* for their Nobility. This may further be noted, that though *Venice* of late enjoyed Peace abroad, yet it had been with that Charge, either for Fortification and Defence, or in Bribery so excessive, whereby of late upon any terms they purchased their Peace, that it is said their Taxes are such, that Christians generally live better under the *Turk*, than under the *Venetians*, for there is not a grain of Corn, a spoonful of Wine, Salt, Eggs, Birds, Beasts, Fowl, or Fish sold, that payeth not a certain Custom : upon occasions the Labourers and Crafts-men pay a Rate by the Poll monthly,

they receive incredible Gains by Usury of the Jews; for in every City they keep open Shops of Interest, taking pawns after fifteen in the hundred, and if at the years end it be not redeemed, it is forfeited, or at the least, sold at great loss. The Revenues which the very Courtizans pay for Toleration, maintains no less than a dozen of Gallies.

By what hath been said, it may be judged how unagreeable the popular Government of *Rome* heretofore, and of *Venice*, and the *United Provinces* at present, are, either for Religion or Peace (which two are principal ingredients of Government) and so consequently not fit to be reckoned for Forms, since whatsoever is either good or tolerable in either of their Governments, is borrowed or patched up of a broken, and distracted *Monarchy*. Lastly, though *Venice* and the *Low Countreys* are the only remarkable places in this age that reject *Monarchy*; yet neither of them pretend their Government to be founded upon any original Right of the People, or have the Common people any power amongst them, or any chosen by them. Never was any popular Estate in the World famous for keeping themselves in peace; all their glory hath been for Quarrelling and Fighting.

Those that are willing to be perswaded, that the power of Government is originally in the People, finding how impossible it is for any people to exercise such power, do surmise, that though the people cannot govern, yet they may choose Representatives or Trustees, that may manage this power for the People, and such Representatives must be surmised to be the People. And since such Representatives cannot

not truly be chosen by the People, they are fain to divide the People into several parts, as of Provinces, Cities, and Burrough-Towns, and to allow to every one of those parts to choose one Representor or more of their own : and such Representors, though not any of them be chosen by the whole, or major part of the People, yet still must be surmised to be the People ; nay, though not one of them be chosen either by the People, or the major part of the People of any Province, City, or Burrough, for which they serve, but onely a smaller part, still it must be said to be the People. Now when such Representors of the People do Assemble or meet, it is never seen that all of them can at one time meet together ; and so there never appears a true, or full Representation of the whole People of the Nation, the Representors of one part or other being absent, but still they must be imagined to be the People. And when such imperfect Assemblies be met, though not half be present, they proceed : and though their number be never so small, yet it is so big, that in the debate of any Business of moment, they know not how to handle it, without referring it to a fewer number than themselves, though themselves are not so many as they should be. Thus those that are chosen to represent the People, are necessitated to choose others, to represent the Representors themselves ; a Trustee of the North doth delegate his power to a Trustee of the South ; and one of the East may substitute one of the West for his Proxy : hereby it comes to pass, that Publick Debates which are imagined to be referred to a general Assembly of a Kingdom, are contracted into a particular or private
Assembly,

Assembly, than which nothing can be more destructive, or contrary to the nature of Publick Assemblies. Each company of such Trustees hath a Prolocutor, or Speaker; who, by the help of three or four of his fellows that are most active, may easily comply in gratifying one the other, so that each of them in their turns may sway the Trustees, whilst one man, for himself or his friend, may rule in one Business, and another man for himself or his friend prevail in another cause, till such a number of Trustees be reduced to so many petty Monarchs as there be men of it. So in all Popularities, where a General Council, or great Assembly of the People meet, they find it impossible to dispatch any great Action, either with Expedition or Secrecy, if a publick free Debate be admitted; and therefore are constrained to Epitomize, and sub-epitomise themselves so long, till at last they crumble away into the Atomes of *Monarchy*, which is the next degree to *Anarchy*; for *Anarchy* is nothing else but a broken *Monarchy*, where every man is his own *Monarch*, or Governour.

Whereas the Power of the People in choosing both their Government and Governours, is of late highly magnified, as if they were able to choose the best and excellentest men for that purpose. We shall find it true what *Aristotle* hath affirmed, that to choose well is the office of him that hath Knowledge; none can choose a Geometrician but he that hath skill in Geometry, l. 3. c. 11. for, saith he, All men esteem not Excellency to be one and the same, l. 3. c. 17.

A great deal of talk there is in the World of the Freedom and Liberty that they say is to be found in Popular Commonweals ; it is worth the enquiry how far, and in what sense this Speech of Liberty is true. *True Liberty is for every man to do what he list, or to live as he please, and not to be tied to any Laws.* But such Liberty is not to be found in any Commonweal ; for there are more Laws in Popular Estates than any where else ; and so consequently less Liberty : and Government many say was invented to take away Liberty, and not to give it to every man ; such Liberty cannot be ; if it should, there would be no Government at all : therefore *Aristotle*, l. 6. cap. 4. *It is profitable not to be lawful to do every thing that we will, for power to do what one will, cannot restrain that Evil that is in every man ;* so that true Liberty cannot, nor should not be in any Estate. But the onely Liberty that the talkers of Liberty can mean, is a Liberty for some men to *Rule and to be Ruled*, for so *Aristotle* expounds it ; one while to Govern, another while to be Governed ; to be a King in the forenoon, and a Subject in the afternoon ; this is the onely Liberty that a Popular Estate can brag of, that where a *Monarchy* hath but one King, their Government hath the liberty to have many Kings by turns. If the Common People look for any other Liberty, either of their Persons or their Purfes, they are pitifully deceived, for a perpetual Army and Taxes are the principal materials of all Popular Regiments : never yet any stood without them, and very seldom continued with them ; many popular Estates have started up, but few have lasted ; *It is no hard matter for any kind of Government to last one, or two, or three*

three days, l. 6. c. 5. For all such as out of hope of Liberty, attempt to erect new Forms of Government, he gives this prudent Lesson. *We must look well into the continuance of Time, and remembrance of many Years, wherein the means tending to establish Community had not lain hid, if they had been good and useful; for almost all things have been found out, albeit some have not been received, and other some have been rejected, after men have had experience of them; l. 2. c. 5.*

It is believed by many, that at the very first Assembling of the People, it was unanimously agreed in the first place, that the Consent of the major part should bind the whole; and that though this first Agreement cannot possibly be proved, either how, or by whom it should be made; yet it must necessarily be believed or supposed, because otherwise there could be no lawful Government at all. That there could be no lawful Government, except a general Consent of the whole People be first surmised, is no sound proposition; yet true it is, that there could be no popular Government without it. But if there were at first a Government without being beholden to the People for their Consent, as all men confess there was, I find no reason but that there may be so still, without asking Leave of the Multitude.

If it be true, that men are by nature free-born, and not to be governed without their own Consents, and that Self-preservation is to be regarded in the first place, it is not lawful for any Government but *Self-government* to be in the World, it were sin in the People to Desire, or attempt to Consent to any other Government: if the Fathers

thers will promise for themselves to be Slaves, yet for their Children they cannot, who have alwayes the same Right to set themselves at Liberty, which their Fathers had to Enslave themselves.

To pretend that a major part, or the silent Consent of any part, may be interpreted to bind the whole People, is both unreasonable and unnatural; it is against all Reason for men to bind others, where it is against Nature for men to bind themselves. Men that boast so much of natural Freedom, are not willing to consider how contradictory and destructive the Power of a major part is to the natural Liberty of the whole People; the two grand Favourites of the Subjects, *Liberty* and *Property* (for which most men pretend to strive) are as contrary as Fire to Water, and cannot stand together. Though by humane Laws in *Voluntary Actions*, a major part may be tolerated to bind the whole Multitude, yet in *Necessary Actions*, such as those of Nature are, it cannot be so. Besides, if it were possible for a whole People to choose their Representatives, then either every, each one of those Representatives ought to be particularly chosen by the whole People, and not one Representative by one part, and another Representative by another part of the People, or else it is necessary, that continually the entire Number of the Representatives be present, because otherwise the whole People is never represented.

Again, it is impossible for the People, though they might and would choose a Government, or Governours, ever to be able to do it: for the People, to speak truly and properly, is a thing or Body
in

in continual Alteration and Change, it never continues one Minute the same, being composed of a Multitude of Parts, whereof divers continually decay and perish, and others renew and succeed in their places; they which are the People this Minute, are not the People the next Minute. If it be answered, that it is impossible to stand so strictly, as to have the Consent of the whole People; and therefore that which cannot be, must be supposed to be the Act of the whole People: This is a strange Answer, first to affirm a Necessity of having the Peoples Consent, than to confess an Impossibility of having it. If but once that Liberty, which is esteemed so sacred, be broken, or taken away but from one of the meanest or basest of all the People; a wide Gap is thereby opened for any Multitude whatsoever, that is able to call themselves, or whomsoever they please, the People.

Howsoever men are naturally willing to be persuaded, that all Sovereignty flows from the Consent of the People, and that without it no true Title can be made to any Supremacy; and that it is so *currant an Axiome of late*, that it will certainly pass without Contradiction as a late *Exercitator* tells us: yet there are many and great Difficulties in the Point never yet determined, not so much as disputed, all which the *Exercitator* waves and declines, professing he will not insist upon the Distinctions, touching the manner of the Peoples passing their Consent, nor determine which of them is sufficient, and which not to make the Right or Title; whether it must be Antecedent to Possession, or may be consequent: Express, or Tacite: Collective, or Representative: Absolute, or conditioned: Free, or Inforced: Revocable, or Ir-

revocable. All these are material Doubts concerning the Peoples Title, and though the *Exercitator* will not himself determine what Consent is sufficient, and what not, to make a Right or Title, yet he might have been so courteous, as to have directed us, to whom we might go for Resolution in these Cases. But the Truth is, that amongst all them that plead the Necessity of the Consent of the People, not one of them hath ever toucht upon these so necessary Doctrines; it is a Task it seems too difficult, otherwise surely it would not have been neglected, considering how necessary it is to resolve the Conscience, touching the manner of the Peoples passing their Consent; and what is sufficient, and what not, to make, or derive a Right, or Title from the People.

No Multitude or great Assembly of any Nation, though they be all of them never so good and virtuous, can possibly govern; this may be evidently discovered by considering the Actions of great and numerous Assemblies, how they are necessitated to relinquish that supreme Power, which they think they exercise, and to delegate it to a few. There are two Parts of the Supreme Power, the *legislative*, and the *Executive*, neither of these can a great Assembly truly act. If a new Law be to be made it may in the General receive the Proposal of it from one or more of the General Assembly, but the forming, penning, or framing it into a Law is committed to a few, because a great number of persons cannot without tedious, and dilatory Debates, examine the Benefits and Mischiefs of a Law. Thus in the very first Beginning the Intention of a general Assembly is frustrated; then after a Law is
pen-

penned or framed, when it comes to be questioned, whether it shall pass or nay; though it be Voted in a full Assembly, yet by the Rules of the Assembly, they are all so tyed up, and barred from a free and full Debate; that when any man hath given the Reasons of his Opinion; if those Reasons be argued against, he is not permitted to reply in Justification or Explanation of them, but when he hath once spoken, he must be heard no more: which is a main Denial of that Freedom of Debate, for which the great Assembly is alleaged to be ordained in the high Point of *Legislative Power*.

The same may be said, touching the *executive Power*; if a cause be brought before a great Assembly, the first thing done, is to referr, or commit it to some few of the Assembly, who are trusted with the examining the Proofs, and Witnesses, and to make Report to the general Assembly; who upon the Report proceed to give their Judgments without any publick hearing, or interrogating the Witnesses, upon whose Testimonies diligently examined every man that will pass a conscientious judgment is to rely. Thus the *legislative* and *executive Power* are never truly practised in a great Assembly; the true Reason whereof is, if Freedom be given to Debate, never any thing could be agreed upon without endless Disputes; meer Necessity compels to refer main Transactions of Business to particular Congregations and Committees.

Those Governments that seem to be popular are kinds of petty *Monarchies*, which may thus appear: Government is a Relation between the Governours, and the governed, the one cannot be without

out the other, *mutuò se ponunt & auferunt*; where a Command or Law proceeds from a major part, there those individual Persons that concurred in the Vote, are the Governours, because the Law is only their Will in particular: the Power of a major Part being a contingent, or casual thing, expires in the very Act it felt of voting, which Power of a major part is grounded upon a Supposition, that they are the stronger part; when the Vote is past, these Voters, which are the major part, return again, and are incorporated into the whole Assembly, and are buried as it were in that Lump, and no otherwise considered; the Act or Law ordained by such a Vote, loseth the Makers of it, before it comes to be obeyed; for when it comes to be put in Execution, it becomes the Will of those who enjoyn it, and force Obedience to it, not by Virtue of any Power derived from the Makers of the Law. No man can say, that during the Reign of the late Queen *Elizabeth*, that King *Henry* the 8th. or *Edward* the sixth did govern, although that many of the Laws that were made in those two former Princes times, were observed, and executed under her Government; but those Laws, though made by her Predecessours, yet became the Laws of her present Government; who willed and commanded the Execution of them, and had the same Power to correct, interpret, or mitigate them, which the first makers of them had; every Law must always have some present known Person in Being, whose Will it must be to make it a Law for the Present; this cannot be said of the major part of any Assembly, because that major part instantly cealeth, as

soon as ever it hath voted : an infallible Argument whereof is this, that the same major part after the Vote given, hath no Power to correct, alter, or mitigate it, or to Cause it to be put in Execution ; so that he that shall act, or cause that Law to be executed, makes himself the Commander, or willer of it, which was originally the Will of others : It is said by Mr. *Hobs* in his *Leviathan* page 141. *nothing is Law, where the Legislator cannot be known, for there must be manifest Signs, that it proceedeth from the Will of the Sovereign; there is requisite, not only a Declaration of the Law, but also sufficient Signs of the Author and the Authority.*

That Senate or great Council, wherein it is conceived the supreme, or legislative Power doth rest, consists of those Persons who are actually Subjects at the very same time, wherein they exercise their legislative Power, and at the same Instant may be guilty of breaking one Law, whilst they are making another Law ; for it is not the whole and entire Will of every particular Person in the Assembly, but that part onely of his Will, which accidentally falls out to concurr with the Will of the greater part : So that the Sharers of the legislative Power have each of them, perhaps not a hundreth part of the legislative Power (which in it self is indivisible) and that not in *Act*, but in *Possibility*, only in one particular Point for that Moment, whilst they give their Vote. To close this Point which may seem strange and new to some, I will produce the Judgment of *Bodin*, in his sixth Book of a Commonweal, and the fourth Chapter ; his words are, *The chief Point of a Commonweal, which is the Right of Sovereignty, cannot be, nor insist, to speak properly,*
but


but in Monarchy; for none can be Sovereign in a Commonwealth, but one alone; if they be two or three or more, no one is Sovereign, for that no one of them can give or take a Law from his Companion: and although we imagine a Body of many Lords, or of a whole People to hold the Sovereignty, yet hath it no true Ground nor Support, if there be not a Head with absolute Power to unite them together, which a simple Magistrate without Sovereign Authority cannot do. And if it chance that the Lords, or Tribes of the People be divided (as it often falls out) then must they fall to Arms one against another: and although the greatest part be of one Opinion, yet may it so happen, as the lesser part, having many Legions, and making a Head, may oppose it self against the greater Number, and get the Victory. We see the Difficulties which are, and always have been in popular Estates, whereas they hold contrary Parts and for divers Magistrates, some demand Peace, others War; some will have this Law, others that; some will have one Commander, others another; some will treat a League with the King of France, others with the King of Spain, corrupted or drawn, some one Way, some another, making open War, as hath been seen in our Age amongst the Grisons &c.

Upon these Texts of Aristotle forecited, and from the Mutability of the Roman Popularity, which Aristotle lived not to see, I leave the Learned to consider, whether it be not probable that these, or the like Paradoxes may be inferred to be the plain Mind of Aristotle, viz. 1. That there is no Form of Government, but Monarchy only: 2. That there is no Monarchy, but Pa-

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ternal. 3. That there is no Paternal Monarchy, but Absolute, or Arbitrary. 4. That there is no such thing as an Aristocratie or Democratic. 5. That there is no such Form of Government as a Tyranny. 6. That the People are not born Free by Nature.

DIRECTI.



DIRECTIONS

F O R

Obedience to Government

I N

Dangerous or Doubtful Times.

ALL those who so eagerly strive for an original Power to be in the People, do with one Consent acknowledge, that originally the Supreme Power was in the Fatherhood ; and that the first Kings were Fathers of Families : This is not only evident, and affirmed by *Aristotle* ; but yielded unto by *Grotius*, Mr. *Selden*, Mr. *Hobbs*, Mr. *Ascam* ; and all others of that Party, not one excepted, that I know of.

Now for those that confess an original Subjection in Children, to be governed by their Parents, to dream of an original Free-

the Power of the Supreme Father) doth in many cases, for the publick Benefit of Society, free Children from subjection to the Subordinate Parent, so that the natural Subjection by such Emancipation of Children, is not extinguished, but onely assumed and regulated by the Parent paramount.

Secondly, *Grotius* cites *Numb.* 30. to prove that the Power of the Fathers over the Sons and Daughters, to dissolve their Vows, was not perpetual, but during the time only whilst the Children were part of the Fathers Family. But if we turn to the Chapter, we may find that *Grotius* either deceives himself, or us; for there is not one word in that Chapter concerning the Vows of Sons, but of Daughters only, being in their Father's Family; and the Being of the Daughter in the Father's House, meaneth only the Daughter's being a Virgin, and not married, which may be gathered by the Argument of the whole Chapter, which taketh particular order for the Vows of Women of all Estates. First, for Virgins, in the third verse. Secondly, for Wives in general, in the sixth verse. Thirdly, for Widows, and Women divorced, in the ninth verse. There is no Law for Virgins out of their Father's houses; we may not think they would have been omitted, if they had been free from their Fathers; we find no freedom in the Text for Women, till after Marriage: And if they were married, though they were in their Father's houses, yet the Fathers had no power of their Vows, but their Husbands.

If, by the Law of Nature, departure from the Fathers house had emancipated Children, why doth the Civil Law, contrary to the Law of Nature,

ture, give Power and Remedy to Fathers for to recover by Action of Law their Children that depart, or are taken away from them without their Consent? Without the Consent of Parents the Civil Law allows no emancipation.

Concerning Subjection of Children to Parents, Grotius distinguisheth three several times.

The first is the time of *Imperfect Judgment*.

The second is the time of *Perfect Judgment*: but whilst the Son remains part of the Father's Family.

The third is, the time after he hath departed out of his Father's Family.

In the first time he saith, *All the actions of Children are under the dominion of the Parents.*

During the second time, when they are of the age of mature Judgment, they are under their Father's Command in those actions onely, which are of moment for their Parents Family. In other actions the Children have a Power or moral Faculty of doing, but they are bound in those also to study alwayes to please their Parents. But since this Duty is not by force of any moral Faculty, as those former are, but onely of Piety, Observance, and Duty of repaying Thanks; it doth not make any thing void which is done against it, as neither a gift of any thing is void, being made by any Owner whatsoever, against the rules of Parsimony.

In both these times, the Right of Ruling and Compelling is (as Grotius acknowledgeth) comprehended so far forth as Children are to be compelled to their Duty, or amended; although the Power of a Parent doth so follow the person of a Father, that it cannot be

pulled away, and transferred upon another, yet the Father may naturally pawn, or also sell his Son, if there be need.

In the third time he saith, *the Son is in all things Free, and of his own Authority : always that Duty remaining of Piety and Observance, the cause of which is perpetual.* In this triple distinction, though Grotius allow Children in some cases during the second, and in all cases during the third time to be free, and of their own Power, by a moral Faculty : yet, in that he confesseth, *in all cases Children are bound to study always to please their Parents out of Piety and Duty, the cause of which, as he saith, is perpetual :* I cannot conceive, how in any case Children can naturally have any Power or moral Faculty of doing what they please without their Parents leave, since they are alwayes bound to study to please their Parents. And though by the Laws of some Nations, Children, when they attain to years of Discretion, have Power and Liberty in many actions ; yet this Liberty is granted them by Positive and Humane Laws onely, which are made by the Supreme Fatherly Power of Princes, who Regulate, Limit, or Assume the Authority of inferiour Fathers, for the publick Benefit of the Commonwealth : so that naturally the Power of Parents over their Children never ceaseth by any Separation; but only by the Permission of the transcendent Fatherly power of the Supreme Prince, Children may be dispensed with, or privileged in some cases, from obedience to subordinate Parents.

Touching

Touching the Point of dissolving the Vows of Children, *Grotius* in his last Edition of his Book hath corrected his first: for in the first he teacheth, that *the Power of the Father was greater over the Daughter dwelling with him, than over the Son; for her Vow he might make void, but not his*: But instead of these words, in his last Edition, he saith, that *the Power over the Son or Daughter to dissolve Vows, was not perpetual, but did indure as long as the Children were a part of their Fathers Family*. About the meaning of the Text out of which he draws this Conclusion, I have already spoken.

Three wayes *Grotius* propoundeth, whereby Supreme Power may be had.

First, By full Right of Propriety.

Secondly, By an *Usufructuary Right*.

Thirdly, By a *Temporary Right*.

The Roman Dictators, saith he, had Supreme Power by a *Temporary Right*, as well those Kings who are first Elected, as those that in a lawful Right succeed to Kings elected, have Supreme Power by an *usufructuary Right*: some Kings that have got Supreme Power by a just War, or into whose Power some People, for avoiding a greater Evil, have so yielded themselves, as that they have excepted nothing, have a full Right of Propriety.

Thus we find but two means acknowledged by *Grotius*, whereby a King may obtain a full Right of Propriety in a Kingdome: That is, either by a just War, or by Donation of the People.

How a War can be just without a precedent Title in the Conquerour, *Grotius* doth not shew; and if the Title onely make the War just, then no

other Right can be obtained by War, than what the Title bringeth; for a just War doth onely put the Conquerour in possession of his old Right, but not create a New. The like which *Grotius* saith of Succession, may be said of War. Succession (saith he) is no Title of a Kingdome, which gives a Form to the Kingdom, but a Continuation of the Old; for the Right which began by the Election of the Family, is continued by Succession; wherefore, so much as the first Election gave, so much the Succession brings. So to a Conquerour that hath a Title, War doth not give, but put him in possession of a Right: and except the Conquerour had a full Right of Propriety at first, his Conquest cannot give it him: for if originally he and his Ancestors had but an usufructuary Right, and were cuted of the possession of the Kingdom by an Usurper: here, though the Re-conquest be a most just War, yet shall not the Conquerour in this case gain any full Right of Propriety, but must be remitted to his usufructuary Right onely: for what Justice can it be, that the Injustice of a third Person, an Usurper, should prejudice the People, to the devesting of them of that Right of Propriety, which was reserved in their first Donation to their Elected King, to whom they gave but an usufructuary Right, as *Grotius* conceiveth? Wherefore it seems impossible, that there can be a just War, whereby a full Right of Propriety may be gained, according to *Grotius's* Principles. For if a King come in by Conquest, he must either conquer them that have a Governour, or those People that have none: if they have no Governour, then they are a free

Peo-

People, and so the War will be unjust to conquer those that are Free, especially if the Freedom of the People be by the primary Law of Nature, as *Grotius* teacheth: But if the People conquered have a Governour, that Governour hath either a Title or not; If he have a Title, it is an unjust War that takes the Kingdom from him: If he have no Title, but only the Possession of a Kingdom, yet it is unjust for any other man, that wants a Title also, to conquer him that is but in possession; for it is a just Rule, that where the Cases are alike, he that is in Possession is in the better condition; *In pari causa possidentis melior conditio*. Lib. 2. c. 23. And this by the Law of Nature, even in the judgment of *Grotius*. But if it be admitted, that he that attempts to conquer have a Title, and he that is in possession hath none: here the Conquest is but in nature of a possessory Action, to put the Conquerour in possession of a primer Right, and not to raise a new Title; for War begins where the Law fails: *Ubi Judicia deficiunt incipit Bellum*. Lib. 2. c. 1. And thus, upon the matter, I cannot find in *Grotius's* Book de *Jure Belli*, how that any Case can be put wherein by a just War a man may become a King, pleno Jure Proprietatis.

All Government and Supreme Power is founded upon publick Subjection, which is thus defined by *Grotius*. *Publica Subjectio est, qua se Populus homini alicui, aut pluribus hominibus, aut etiam populo alteri in ditionem dat*. Lib. 2. c. 5. If Subjection be the Gift of the People, how can Supreme Power, pleno Jure, in full Right, be got by a just War?

As

As to the other means whereby Kings may get Supreme Power in full Right of Propriety, *Grotius* will have it to be, *when some People, for avoiding a greater Evil, do so yield themselves into anothers Power, as that they do except nothing.* It would be considered how, without War, any People can be brought into such danger of Life, as that because they can find no other wayes to defend themselves, or because they are so pressed with Poverty, as they cannot otherwise have means to sustain themselves, they are forced to renounce all Right of Governing themselves, and deliver it to a King.

But if such a Case cannot happen, but by a War onely, which reduceth a People to such terms of Extremity, as compells them to an absolute Abrenuntiation of all Sovereignty: then War, which causeth that necessity, is the prime means of extorting such Sovereignty, and not the free Gift of the People, who cannot otherwise choose but give away that Power which they cannot keep.

Thus, upon the Reckoning, the two ways propounded by *Grotius*, are but one way; and that one way, in conclusion, is no way whereby Supreme Power may be had in full Right of Propriety. His two ways are, a *Just War*, or a *Donation of the People*; a just War cannot be without a Title, no Title without the Donation of the People, no Donation without such a Necessity as nothing can bring upon the Donors but a War. So that howsoever *Grotius* in words acknowledges that Kings may have a full Right of Propriety, yet by consequence he denies it, by such circular Suppositions, as by coincidence destroy each other, and in effect

effect he leaves all People a Right to plead in Bar against the Right of Propriety of any Prince, either *per minas*, or *per dures*.

Many times, saith *Grotius*, it happens, that War is grounded upon *Expletive Justice*, *Justitiam Expleticem*, which is, when a man cannot obtain what he ought, he takes that which is as much in value, which in moral Estimation is the same. For in War, when the same Province cannot be recovered, to the which a man hath a Title, he recovers another of the like value. This recovery cannot give a full right of Propriety : because the Justice of such a War reacheth no farther than to a compensation for a former Right to another thing, and therefore can give no new Right.

I am bound to take notice of a Case put by *Grotius*, amongst those Causes which he thinks should move the People to renounce all their Right of Governing, and give it to another. It may also happen (saith he) that a Father of a Family possessing large Territories, will not receive any man to dwell within his Land upon any other condition. And in another place, he saith, that all Kings are not made by the People, which may be sufficiently understood by the Examples of a Father of a Family receiving Strangers under the Law of Obedience. In both these Passages we have a close and curt acknowledgment, that a Father of a Family may be an absolute King over Strangers, without Choice of the People ; now I would know whether such Fathers of Families have not the same absolute Power over their own Children, without the Peoples Choice, which he allows them over Strangers :

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if they have, I cannot but call them Absolute proprietary Kings, though *Grotius* be not willing to give them that Title in plain terms: for indeed to allow such Kings, were to condemn his own Principle, that *Dominion came in by the Will of the People*; and so consequently to overthrow his *Usufructuary Kings*, of whom I am next to speak.

Grotius saith, that the Law of Obeying, or Resisting Princes, depends upon the Will of them who first met in Civil Society, from whom Power doth flow to Kings: And, that men of their own accord came together into Civil Society, from whence springs Civil Power, and the People may choose what Form of Government they please. Upon these Suppositions, he concludes, that Kings, elected by the People, have but an *Usufructuary Right*, that is, a Right to take the Profit or Fruit of the Kingdom, but not a Right of Propriety or Power to alienate it. But why doth he call it an *Usufructuary Right*? It seems to me a term too mean or base to express the Right of any King, and is derogatory to the Dignity of Supreme Majesty. The word *Usufructuary* is used by the Lawyers, to signify him that hath the Use, Profit or Fruit of some Corporal thing, that may be used without the Property, for of *fungible things* (*res fungibiles*, the *Civilians* call them) that are spent or consumed in the Use, as Corn, Wine, Oyl, Money, there cannot be an *Usufructuary Right*.

It is to make a Kingdom all one with a Farm, as if it had no other Use but to be let out to him that can make most of it: whereas, in truth, it is the

the Part and Duty of a King to govern, and he hath a Right so to do, and to that End Supreme Power is given unto him; the taking of the Profit, or making Use of the Patrimony of the Crown, is but as a means onely to enable him to perform that great work of Government.

Besides, *Grotius* will not onely have an elected King, but also his lawful Successors, to have but an *Usufructuary Right*, so that though a King hath a Crown to him and to his Heirs, yet he will allow him no Propriety, because he hath no Power to alienate it; for he supposeth the primary Will of the People to have been to bestow Supreme Power to go in Succession, and not to be alienable; but for this he hath no better proof than a naked presumption: *In Regnis quæ Populi voluntate delata sunt concedo non esse præsumendum eam fuisse Populi voluntatem, ut alienatio Imperii sui Regi permitteretur.*

But though he will not allow Kings a Right of Propriety in their Kingdoms, yet a Right of Propriety there must be in some body, and in whom but in the People? for he saith, *the Empire which is exercised by Kings, doth not cease to be the Empire of the People.* His meaning is, the Use is the King's, but the Property is the Peoples.

But if the Power to alienate the Kingdom be in him that hath the Property, this may prove a comfortable Doctrine to the People: but yet to allow a Right of Succession in Kings, and still to reserve a Right of Property in the People, may make some contradiction: for the Succession must either hinder the Right of Alienation which is in the People,

People, or the Alienation must destroy that Right of Succession, which, by *Grotius's* confession, may attend upon elected Kings.

Though *Grotius* confess, that Supreme Power be *Unum quiddam*, and in it self indivisible, yet he saith, *Sometimes it may be divided either by parts potential, or subjunctive*. I take his meaning to be, that the Government or the Governed may be divided: an Example he gives of the *Roman Empire*, which was divided, into the *East* and *West*: but whereas he saith, *fieri potest, &c.* *It may be, the People choosing a King, may reserve some Actions to themselves, and in others they may give full power to the King*: The Example he brings out of *Plato* of the *Heracides* doth not prove it, and it is to dream of such a Form of Government as never yet had name, nor was ever found in any settled Kingdom, nor cannot possibly be without strange Confusion.

If it were a thing so voluntary, and at the pleasure of men, when they were free, to put themselves under Subjection, why may they not as voluntarily leave Subjection when they please, and be free again? If they had a liberty to change their Natural Freedom, into a voluntary Subjection, there is stronger reason that they may change their voluntary Subjection into natural Freedom, since it is as lawful for men to alter their Wills as their Judgments.

Certainly, it was a rare felicity, that all the men in the World at one instant of time should agree together in one mind, to change the Natural Community of all things into Private Dominion:
for

for without such an unanimous Consent, it was not possible for Community to be altered: for, if but one man in the World had dissented, the Alteration had been unjust, because that Man by the Law of Nature had a Right to the common Use of all things in the World; so that to have given a Propriety of any one thing to any other, had been to have robbed him of his Right to the common Use of all things. And of this Judgment the Jesuit *Lud. Molina* seems to be, in his Book *De Justitia*, where he saith, *Si aliquis de cohabitantibus, &c.* If one of the Neighbours will not give his Consent to it, the Commonwealth should have no Authority over him, because then every other man hath no Right or Authority over him, and therefore can they not give Authority to the Commonwealth over him.

If our first Parents, or some other of our Forefathers did voluntarily bring in Propriety of Goods, and Subjection to Governours, and it were in their power either to bring them in or not, or having brought them in, to alter their minds, and restore them to their first condition of Community and Liberty; what reason can there be alleged that men that now live should not have the same power? So that if any one man in the World, be he never so mean or base, will but alter his Will, and say, he will resume his Natural Right to Community, and be restored unto his Natural Liberty, and consequently take what he please, and do what he list; who can say that such a man doth more than by Right he may? And then it will be lawful for every man, when he please,

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to dissolve all Government, and Destroy all Property.

Whereas *Grotius* saith, *That by the Law of Nature all things were at first Common*; and yet teacheth, that *after Propriety was brought in, it was against the Law of Nature to use Community*; He doth thereby not onely make the *Law of Nature* changeable, which he saith *God cannot do*, but he also makes the *Law of Nature* contrary to it self.

OBSER.

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THE
ANARCHY
OF
A Limited or Mixed
MONARCHY.

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THE PREFACE.

WE do but flatter our selves,
if we hope ever to be go-
verned without an Arbi-
trary Power. No : we mi-
stake, the Question is not, Whether there
shall be an Arbitrary Power ; but the only
point is, Who shall have that Arbitrary
Power, whether one man or many ? There
never was, nor ever can be any People go-
vern'd without a Power of making Laws,
and every Power of making Laws must be
Arbitrary : For to make a Law according
to Law, is Contradictio in adjecto. It is
generally confessed, that in a Democracy
the Supreme or Arbitrary Power of making
Laws is in a multitude ; and so in an A-
ristocracy the like Legislative or Arbitrary
Power is in a few, or in the Nobility. And
therefore by a necessary Consequence, in a
Monarchy the same Legislative Power must
be in one ; according to the Rule of Ari-
stotle ;

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Aristotle, who saith, Government is in One, or in a Few, or in Many.

This antient Doctrine of Government, in these latter days hath been strangely refined by the Romanists, and wonderfully improved since the Reformation, especially in point of Monarchy, by an Opinion, That the People have Originally a Power to create several sorts of Monarchy, to limit and compound them with other Forms of Government, at their pleasure.

As for this natural Power of the People, they finde neither Scripture, Reason, or Practice to justifie it: For though several Kingdoms have several and distinct Laws one from another; yet that doth not make several sorts of Monarchy: Nor doth the difference of obtaining the Supreme Power, whether by Conquest, Election, Succession, or by any other way, make different sorts of Government. It is the difference only of the Authors of the Laws, and not of the Laws themselves, that alters the Form of Government; that is, whether one man, or more than one, make the Laws.

Since the growth of this new Doctrine, Of the Limitation and Mixture of Monarchy, it is most apparent, that Monarchy hath been crucified (as it were) between
two

The Preface.

two Thieves, the Pope and the People ; for what Principles the Papists make use of for the Power of the Pope above Kings, the very same, by blotting out the word Pope, and putting in the word People, the Plebists take up to use against their Sovereigns.

If we would truly know what Popery is, we shall finde by the Laws and Statutes of the Realm, that the main, and indeed the only Point of Popery, is the alienating and withdrawing of Subjects from their Obedience to their Prince, to raise Sedition and Rebellion : If Popery and Popularity agree in this Point, the Kings of Christendome, that have shaken off the Power of the Pope, have made no great bargain of it, if in place of one Lord abroad, they get many Lords at home within their own Kingdoms.

I cannot but reverence that Form of Government which was allowed and made use of for God's own People, and for all other Nations. It were Impiety, to think that God, who was careful to appoint Judicial Laws for his chosen People, would not furnish them with the best Form of Government : or to imagine that the Rules given in divers places in the Gospel, by

The Preface.

our blessed Saviour and his Apostles, for Obedience to Kings, should now, like Almanacks out of date, be of no use to us; because it is pretended, We have a Form of Government now, not once thought of in those days. It is a shame and scandal for us Christians, to seek the Original of Government from the Inventions or Fictions of Poets, Orators, Philosophers, and Heathen Historians, who all lived thousands of Years after the Creation, and were (in a manner) ignorant of it: and to neglect the Scriptures, which have with more Authority most particularly given us the true Grounds and Principles of Government.

These Considerations caused me to scruple this Modern piece of Politicks, touching Limited and Mixed Monarchy: and finding no other that presented us with the nature and means of Limitation and Mixture, but an Anonymus Authour; I have drawn a few brief Observations upon the most considerable part of his Treatise, in which I desire to receive satisfaction from the Authour himself, if it may be, according to his promise in his Preface; or if not from him, from any other for him.

T H E



THE
A N A R C H Y
 Of a Limited or Mixed
M O N A R C H Y.



Here is scarce the meanest man of the multitude, but can now in these days tell us that the Government of the Kingdome of England is a LIMITED and MIXED Monarchy: And it is no marvail, since all the disputes and arguments of these distracted times both from the Pulpit and the Presse to tend and end in this Conclusion.

The Author of the Treatise of Monarchy hath copiously handled the nature and manner of *Limited* and *Mixed* Monarchy, and is the first and onely man (that I know) hath undertaken the task of describing it; others onely mention it, as taking it for granted.

Doct^r Ferne gives the Author of this Treatise of Monarchy this testimony, that *the Mixture of Government is more accurately delivered* P.3.
and urged by this Treatise than by the Author

of the *Fuller Answer*. And in another place Doctor *Ferne* saith, he allows his *distinction of Monarchy into Limited and Mixed*. P.13.

I have with some diligence looked over this Treatise, but cannot approve of these distinctions which he propounds; I submit the reasons of my dislike to others judgements. I am somewhat confident that his doctrine of *Limited and Mixed Monarchy* is an opinion but of yesterday, and of no antiquity, a meer innovation in policy, not so old as *New England*, though calculated properly for that Meridian. For in his first part of the Treatise which concerns Monarchy in General, there is not one proof, text, or example in Scripture that he hath produced to justify his conceit of *Limited and Mixed Monarchy*. Neither doth he afford us so much as one passage or reason out of *Aristotle*, whose books of *Politicks*, and whose natural reasons are of greatest authority and credit with all rational men, next to the sacred Scripture: Nay, I hope I may affirm, and be able to prove, that *Arist.* doth confute both *limited* and *mixed Monarchy*, howsoever Doctor *Ferne*

P.6. think these new opinions to be raised upon *Arist.* principles. As for other Politicians or Historians, either divine or humane, ancient or modern, our Author brings not one to confirm his opinions; nor doth he, nor can he shew that ever any Nation or people were governed by a *limited* or *mixed Monarchy*.

Machiavel is the first in Christendome that I can find that writ of a *Mixed Government*, but not one syllable of a *Mixed Monarchy*: he, in his discourses or disputations upon the Decades of *Livy*, falls so enamored

enamored with the Roman Common-wealth, that he thought he could never sufficiently grace that popular government, unless he said, there was something of Monarchy in it: yet he was never so impudent as to say, it was a *mixed* Monarchy. And what *Machivel* hath said for *Rome*, the like hath *Contarene* for *Venice*. But *Bodin* hath layed open the errors of both these, as also of *Polybius*, and some few others that held the like opinions. As for the Kingome of *England*, if it have found out a form of Government (as the Treatise layeth it down) of such perfection as never any people could; It is both a glory to the Nation, and also to this Author, who hath first decipher'd it.

I now make my approach to the Book it self: The title is, *A Treatise of Monarchy*. The first part of it is, of *Monarchy in General*: Where first, I charge the Author, that he hath not given us any definition or description of Monarchy in General: for by the rules of method he should have first defined, and then divided: for if there be several sorts of Monarchy, then in something they must agree, which makes them to be Monarchies; and in something they must disagree and differ, which makes them to be several sorts of Monarchies. In the first place he should have shewed us in what they all agreed, which must have been a definition of Monarchy in General, which is the foundation of the Treatise; and except that be agreed upon, we shall argue upon we know not what. I press not this main omission of our Author out of any humour of wrangling, but because I am confident that had he pitched upon any definition of Monarchy in
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General, his own definition would have confuted his whole Treatise: Besides, I find him pleased to give us a handsome definition of *Absolute Monarchy*, from whence I may infer, that he knew no other definition that would have fitted all his other sorts of Monarchy; it concerned him to have produced it, lest it might be thought there could be no Monarchy but Absolute.

What our Author hath omitted, I shall attempt to supply, and leave to the scaming. And it shall be a real as well as nominal definition of Monarchy. *A Monarchy is the Government of one alone.* For the better credit of this definition, though it be able to maintain it self, yet I shall deduce it from the principles of our Author of the Treatise of Monarchy.

We all know that this word *Monarch* is compounded of two Greek words, *Μῆρ* and *αἰχμή*; *αἰχμή* is *imperare*, to govern and rule; *Μῆρ* signifies *one alone*. The understanding of these two words may be picked out of our Author. First, for Go-

P.1. vernment he teacheth us, it is *Potestatis exercitium*, the exercise of a moral power; next he grants us, that every *Monarch* (even his limited Monarch) must have the *Supream power* of the State

P.12. in him, so that his power must no way be limited by any power above his; for then he were not a Monarch, but a subordinate Magistrate. Here we have a fair confession of a supream unlimited power in his limited Monarch: if you will know what he means by these words *supream power*, turn to his 26 page, there you will finde, *Supream power is either Legislative, or Gubernative, and that the Legislative power is the chief of the two*; he makes both

both supream, and yet one chief: the like distinction he hath before, where he saith, *The power of Magistracy, in respect of its degrees, is P.5. Nomothetical or Architectionical; and Gubernative or Executive: by these words of Legislative, Nomothetical, and Architectionical power, in plain English, he understands a power of making Laws; and by Gubernative and Executive, a power of putting those Laws in execution, by judging and punishing offenders.*

The result we have from hence is, that by the Authors acknowledgment, every Monarch must have the supream power, and that supream power is, a power to make laws: and howsoever the Author makes the Gubernative and Executive power a part of the supream power; yet he confesseth *the Legislative to be chief, or the highest degree of power, for he doth acknowledge degrees of supream power; nay, he afterwards teacheth us, that the Legislative power is the height of power, to P.40. which the other parts are subsequent and subservient: if Gubernative be subservient to Legislative, how can Gubernative power be supream?*

Now let us examine the Authors *Limited Monarch* by these his own rules; he tells us, that in a *moderated, limited, stinted, conditional, legal or allayed Monarchy, (for all these P.12. terms he hath for it) the supream power must be restrained by some Law according to which this power was given, and by direction of which this power must act; when in a line before he said, that the Monarchs power must not be limited by any power above his: yet here he will have his supream power restrained; not limited, and yet restrained: is not a restraint,*

a limitation? and if restrained, how is it supreme? and if restrained by some Law, is not the power of that Law, and of them that made that Law, above his supreme power? and if by the direction of such Law only he must govern, where is the Legislative power, which is the chief of supreme power? When the Law must rule and govern the Monarch, and not the Monarch the Law,

he hath at the most but a Gubernative or
 P.14. Executive power: *If his authority transcends its bounds, if it command beyond the law, and the Subject is not bound legally to subjection in such cases, and if the utmost extent of the law of the land be the measure of the Limited Monarchs*

P.16. *power, and Subjects duty,* where shall we find the supreme power, that *Culmen* or *apex potestatis*, that *prime æxæ*, which our Author saith, must be in every Monarch: The word *æxæ*, which signifies *principality and power*, doth also signify *principium, beginning*; which doth teach us, that by the word *Prince*, or *principality*, the *principium* or beginning of Government is meant; this, if it be given to the Law, it robs the Monarch, and makes the Law the *primum mobile*; and so that which is but the instrument, or servant to the Monarch, becomes the master. Thus much of the word *æxæ*.

The other word is *solus*, *solus*, *one alone*: the Monarch must not only have the supreme power unlimited, but he must have it alone (with-

P.15. out any companions.) Our Author teacheth us, *He is no Monarch if the Supreme power*

P.17. *be not in one.* And again he saith, *if you put the apex potestatis, or supreme power, in the*

the whole body, or a part of it, you destroy the being of Monarchy.

Now let us see if his mixed Monarchy be framed according to these his own principles: First, he saith, *in a mixed Monarchy the sovereign power must be originally in all three Estates.* And again, his words are, *The three Estates are all sharers in the supreme power — the primity of share in the supreme power is in One.* Here we find, that he that told us the supreme power must be in one, will now allow his mixed Monarch but one share only of the supreme power, and gives other shares to the Estates: thus he destroys the being of Monarchy, by putting the *supream power, or culmen potestatis, or a part of it, in the whole body, or a part thereof*; and yet formerly he confesseth, that *the power of Magistracy cannot well be divided, for it is one simple thing, or indivisible beam of divine perfection*: but he can make this indivisible beam to be divisible into three shares. I have done with the word *solus*, alone. P.5.

I have dwelt the longer upon this definition of Monarchy, because the apprehending of it out of the Authors own grounds, quite overthrows both his *Monarch Limited by Law*, and his *Monarch Mixed with the States*. For to Govern, is to give a Law to others, and not to have a Law given to Govern and limit him that Governs: And to govern alone, is not to have sharers or companions mixed with the Governor. Thus the two words of which Monarchy is compounded, contradict the two sorts of Monarchy which he pleads for; and by consequence his whole Treatise: for these two sorts of *limited and mixed*
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ed Monarchy take up (in a manner) his whole Book.

I will now touch some few particular passages in the Treatise.

P.2. Our Author first confesseth, *it is Gods expresse ordinance there should be Government*; and he proves it by *Gen. 3. 16.* where God ordained *Adam to rule over his Wife, and her desires were to be subject to his*; and as hers, so all theirs that should come of her. Here we have the original grant of Government, and the fountain of all power placed in the *Father* of all mankind; accordingly we finde the *law* for obedience to government given in the terms of *honour thy Father*: not only the constitution of power in general, but the limitation of it to one kind (that is, to Monarchy, or the government of one alone) and the determination of it to the individual person and line of *Adam*, are all three ordinances of God. Neither *Eve* nor her Children could either limit *Adams* power, or joyn others with him in the government; and what was given unto *Adam*, was given in his person to his posterity. This paternal power continued monarchical to the Floud, and after the Floud to the confusion of *Babel*: when Kingdoms were first erected, planted, or scattered over the face of the world, we finde *Gen. 10. 11.* it was done by Colonies of whole families, over which the prime Fathers had supream power, and were Kings, who were all the sons or grand-children of *Noah*, from whom they derived a fatherly and regal power over their families. Now if this supream power was settled and founded by God himself in the fatherhood, how is it possible for the people.

to have any right or title to alter and dispose of it otherwise? what commission can they shew that gives them power either of *limitation or mixture*? It was Gods ordinance, that Supremacy should be unlimited in *Adam*, and as large as all the acts of his will: and as in him, so in all others that have supream power, as appears by the judgement and speech of the people to *Joshuah* when he was supream Governour, these are their words to him, *All that thou commandest us we will do; whosoever be that doth rebel against thy commandment, and will not bearken unto thy words in all that thou commandest him, he shall be put to death:* we may not say that these were evil Councillours or flattering Courtiers of *Joshuah*, or that he himself was a Tyrant for having such arbitrary power. Our Author, and all those who affirm that *power is conveyed to persons by publick consent*, are forced to confess, that it is the fatherly power that first inables a people to make such conveyance; so that admitting(as they hold) that our Ancestors did at first convey power, yet the reason why we now living do submit to such power, is, for that our Fore-fathers every one for himself, his family, and posterity, had a power of resigning up themselves and us to a supream power. As the Scripture teacheth us that *supream power was originally in the fatherhood without any limitation*, so likewise Reason doth evince it, that if God ordained that Supremacy should be, that then Supremacy must of necessity be unlimited: for the power that limits must be above that power which is limited; if it be limited, it cannot be supream: so that if our Author will grant supream power to be the ordinance

nance of God, the supream power will prove it self to be unlimited by the same ordinance, because a supream limited power is a contradiction.

The Monarchical power of *Adam* the Father of all flesh, being by a general binding ordinance settled by God in him and his posterity by right of fatherhood, the form of Monarchy must be preferr'd above other forms, except the like ordinance for other forms can be shewed: neither *may men according to their relations to the form they live under, to their affections and judgments in divers respects, prefer or compare any other form with Monarchy.* The point that most perplexeth our Author and many others, is, that if Monarchy be allowed to be the ordinance of God, *an absurdity would follow, that we should uncharitably condemn all the Communities which have not that form, for violation of Gods ordinance, and pronounce those other powers unlawful.* If those who live under a Monarchy can justify the form they live under to be Gods ordinance, they are not bound to forbear their own justification, because others cannot do the like for the form they live under; let others look to the defence of their own Government: if it cannot be provd or shewd that any other form of government had ever any lawful beginning, but was brought in or erected by Rebellion, must therefore the lawful and just obedience to Monarchy be denied to be the ordinance of God?

To proceed with our Author; in the 3 page he saith, *the Higher Power is Gods ordinance: That it resideth in One or more, in such or such a way, is from humane designment; God by no word binds any people to this or that form, till they by their own act bind themselves.* Because the power and consent

sent of the people in government is the burden of the whole Book, and our author expects it should be admitted as a magisterial postulation, without any other proof than a naked supposition; and since others also maintain that *originally Power was, or now is in the People*, & that *the first Kings were chosen by the People*: they may not be offended, if they be asked in what sense they understand the word [*People*] because this, as many other words, hath different acceptions, being sometimes taken in a larger, otherwhiles in a stricter sense. Literally, and in the largest sense, the word *People* signifies the *whole multitude of mankind*; but *figuratively* and *synecdochically*, it notes many times the *major part* of a multitude, or sometimes the *better*, or the *richer*, or the *wiser*, or some other part; and oftentimes a very small part of the people, if there be no other apparent opposite party, hath the name of the people *by presumption*.

If they understand that the entire multitude or whole people have originally by nature power to chuse a King, they must remember, that by their own principles and rules, by nature all mankind in the world makes but one People, who they suppose to be born alike to an equal freedom from subjection; and where such freedom is, there all things must of necessity be common: and therefore without a joynt consent of the whole people of the world, no one thing can be made proper to any one man, but it will be an injury, and an usurpation upon the common right of all others. From whence it follows, that natural *freedom* being once granted, there cannot be any one man chosen a King without the universal consent of all

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the people of the world at one instant, *nemine contradicente*. Nay, if it be true that *nature* hath made all men free; though all mankind should concur in one vote, yet it cannot seem reasonable, that they should have power to alter the law of nature; for if no man have power to take away his own life without the guilt of being a murderer of himself, how can any people confer such a power as they have not themselves upon any one man, without being accessories to their own deaths, and every particular man become guilty of being *felo de se*?

If this general signification of the word *people* be disavowed, and men will suppose that the *people* of particular Regions or Countries have power and freedome to chuse unto themselves Kings; then let them but observe the consequence: Since nature hath not distinguished the habitable world into Kingdomes, nor determined what part of a *people* shall belong to one Kingdome, and what to another, it follows, that the original freedome of mankind being supposed, every man is at liberty to be of what Kingdome he please, and so every petty company hath a right to make a Kingdom by it self; and not onely every City, but every Village, and every Family, nay and every particular man, a liberty to chuse himself to be his own King if he please; and he were a madman that being by nature free, would chuse any man but himself to be his own Governour. Thus to avoid the having but of one King of the whole world, we shall run into a liberty of having as many Kings as there be men in the world, which upon the matter, is to have no King at all, but to leave
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all men to their natural liberty, which is the mischief the Pleaders for *natural liberty* do pretend they would most avoid.

But if neither the whole people of the world, nor the whole people of any part of the world be meant, but only the *major part*, or some other part of a part of the world; yet still the objection will be the stronger. For besides that nature hath made no partition of the world, or of the people into distinct Kingdomes, and that without an universal consent at one and the same instant no partition can be made: yet if it were lawful for particular parts of the world by consent to chuse their Kings, nevertheless their elections would bind none to subjection but only such as consented; for the *major part* never binds, but where men at first either agree to be so bound, or where a higher power so commands: Now there being no higher power than nature, but God himself; where neither nature nor God appoints the *major part* to bind, their consent is not binding to any but only to themselves who consent.

Yet, for the present to gratifie them so far as to admit that either by nature, or by a general consent of all mankind, the world at first was divided into particular Kingdomes, and the *major part* of the people of each Kingdome assembled, allowed to chuse their King: yet it cannot truly be said that ever the *whole people*, or the *major part*, or indeed any considerable part of the whole people of any nation ever assembled to any such purpose. For except by some secret miraculous instinct they should all meet at one time, and place, what one man, or company of men less than the whole

people hath power to appoint either time or place of elections, where all be alike *free by nature* ? and without a lawful summons, it is most unjust to bind those that be absent. The whole people cannot summon it self ; one man is sick, another is lame, a third is aged, and a fourth is under age of discretion : all these at some time or other, or at some place or other, might be able to meet, if they might chuse their own time and place, as men naturally free should.

In Assemblies that are by humane politique constitution, the superior power that ordains such assemblies, can regulate and confine them, both for time, place, persons, and other circumstances : but where there is an equality by nature, there can be no superior power ; there every Infant at the hour it is born in, hath a like interest with the greatest and wisest man in the world. Mankind is like the sea, ever ebbing or flowing, every minute one is born, another dies ; those that are the people this minute, are not the people the next minute, in every instant and point of time there is a variation. no one time can be indifferent for all mankind to assemble ; it cannot but be mischievous always at the least to all Infants, and others under age of discretion ; not to speak of women, especially Virgins, who by birth have as much *natural freedom* as any other, and therefore ought not to lose their liberty without their own consent.

But in part to salve this, it will be said that Infants and Children may be concluded by the votes of their Parents. This remedy may cure some part of the mischief, but it destroys the whole cause, and at last stumbles upon the true
original

original of government. For if it be allowed, that the acts of Parents bind the Children, then farewell the doctrine of the *natural freedom of mankind*; where subjection of Children to Parents is natural, there can be no natural freedom. If any reply, that not all Children shall be bound by their Parents consent, but onely those that are under age: It must be considered, that in nature there is no *nonage*; if a man be not born free, he doth not assign him any other time when he shall attain his freedom: or if he did, then Children attaining that age, should be discharged of their Parents contract. So that in conclusion, if it be imagined that the people were ever but once free from subjection by nature, it will prove a meer impossibility ever lawfully to introduce any kind of government whatsoever, without apparent wrong to a multitude of people.

It is further observable, that ordinarily Children and Servants are far a greater number than Parents and Masters; and for the major part of these to be able to vote and appoint what Government or Governours their Fathers and Masters shall be subject unto, is most unnatural, and in effect to give the Children the government over their Parents.

To all this it may be opposed, What need dispute how a people can chuse a King, since there be multitude of examples that Kings have been, and are now adays chosen by their people? The answer is, 1. The question is not of the *fact*, but of the *right*, whether it have been done by a *natural*, or by an *usurped* right. 2. Many Kings are, and have bin chosen by some small part of a

people ; but by the *the whole*, or *major part* of a Kingdom not any at all. Most have been elected by the Nobility, Great men, and Princes of the blood, as in *Poland*, *Denmarke*, and in *Sweden* ; not by any *collective* or *representative* body of any Nation : sometimes a factious or seditious City, or a mutinous Army hath set up a King, but none of all those could ever prove they had *right* or just title either by *nature*, or any otherwise, for such elections. We may resolve upon these two propositions : 1. *That the people have no power or right of themselves to chuse Kings.* 2. *If they had any such right, it is not possible for them any way lawfully to exercise it.*

You will say, *There must necessarily be a right in somebody to elect, in case a King die without an Heir.* I answer, *No King can die without an Heir, as long as there is any one man living in the world.* It may be the Heir may be unknown to the people, but that is no fault in nature, but the negligence or ignorance of those whom it concerns. But if a King could die without an Heir, yet the Kingly power in that case shall not escheat to the whole people, but to the supream Heads and Fathers of Families ; not as they are the *people*, but *quatenus* they are Fathers of people, over whom they have a supream power devolved unto them after the death of their sovereign Ancestor : and if any can have a right to chuse a King, it must be these Fathers, by conferring their distinct fatherly powers upon one man alone. Chief fathers in Scripture are accounted as all the people, as *all the Children of Israel*, as *all the Congregation*, as the Text plainly expounds it self, 2 *Chr.* 1. 2. where *Solomon* speaks to *All Israel*,

Israel, that is, to the Captains, the Judges, and to every Governour, the CHIEF OF THE FATHERS: and so the *Elders of Israel* are expounded to be the chief of the Fathers of the Children of Israel, 1 King. 8. 1. and the 2 Chr. 5. 2.

If it be objected, That Kings are not now (as they were at the first planting or peopling of the world) the Fathers of their People or Kingdoms, and that the fatherhood hath lost the right of governing; An answer is, That all Kings that now are, or ever were, are, or were either Fathers of their people, or the Heirs of such Fathers, or Usurpers of the right of such Fathers. It is a truth undeniable, that there cannot be any multitude of men whatsoever, either great, or small, though gathered together from the several corners and remotest regions of the world, but that in the same multitude, considered by it self, there is one man amongst them that in nature hath a right to be the King of all the rest, as being the next Heir to *Adam*, and all the others subject unto him: every man by nature is a King, or a Subject: the obedience which all Subjects yeild to Kings, is but the paying of that duty which is due to the supream fatherhood: Many times by the act either of an Usurper himself, or of those that set him up, the true Heir of a Crown is dispossessed, God using the ministry of the wickedest men for the removing and setting up of Kings: in such cases the Subjects obedience to the fatherly power must go along and wait upon Gods providence, who only hath right to give and take away Kingdomes, and thereby to adopt Subjects into the obedience of another fatherly power: according to

that of *Arist.* Πατερὰ γὰρ εἶναι βούλονται τὴν βασιλείαν εἶναι. *A Monarchy or Kingdom will be a fatherly government. Ethic. l. 8. c. 12.*

However the *natural freedom of the people* be cried up as the sole means to determine the kind Government and the Governours : yet in the close, all the favourers of this opinion are constrained to grant that the obedience which is due to the fatherly power is the true and only cause of the subjection which we that are now living give to Kings, since none of us gave consent to government, but only our Fore-fathers act and consent hath concluded us.

Whereas many confess that Government only in the *abstract* is the ordinance of God, they are not able to prove any such ordinance in the Scripture, but only in the fatherly power, and therefore we find the Commandment that enjoins obedience to superiours, given in the terms of *Honour thy Father* : so that not onely the *power or right of government*, but the *form of the power of governing*, and the *person having that power*, are all the ordinance of God : the first Father had not only simply power, but power Monarchical, as he was a Father, immediately from God. For by the appointment of God, as soon as *Adam* was created he was Monarch of the World, though he had no subjects ; for though there could not be actual government until there were Subjects, yet by the right of nature it was due to *Adam* to be Governour of his posterity : though not in *act*, yet at least in *habit*, *Adam* was a King from his Creation : And in the state of innocency he had been Governour of his Children ; for the *integrity or excellency* of the

the subjects doth not take away the *order* or *eminency* of the Governour. Eve was subject to Adam before he sinned; the Angels, who are of a pure nature, are subject to God: which confutes their saying, who in disgrace of civil Government or power say it was brought in by sin: Government as to *coactive power* was after sin, because coercion supposeth some disorder, which was not in the state of innocency: But as for *directive power*, the condition of humane nature requires it, since civil society cannot be imagined without power of Government: for although as long as men continued in the state of innocency they might not need the direction of Adam in those things which were *necessarily* and *morally* to be done; yet things *indifferent*, that depended meerly on their free will, might be directed by the power of Adams command.

If we consider the first plantations of the world which were after the building of *Babel* when the confusion of tongues was, we may find the division of the earth into distinct Kingdomes and Countries, by several families, whereof the Sons or Grand-children of *Noah* were the Kings or Governours by a fatherly right; and for the preservation of this power and right in the Fathers, God was pleased upon several Families to bestow a Language on each by it self, the better to unite it into a Nation or Kingdom; as appears by the words of the Text, *Gen. 10. These are the Families of the Sons of Noah, after their generations in their Nations, and by these were the Nations divided in the earth after the flood: Every one after HIS TONGUE, AFTER THEIR FAMILIES in their Nations.*

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The Kings of *England* have been graciously pleased to admit and accept the Commons in Parliament as the representees of the Kingdom, yet really and truly they are not the representative body of the whole Kingdom.

The commons in Parliament are not the representative body of the whole Kingdom; they do not represent the King, who is the head and principal member of the Kingdom; nor do they represent the Lords, who are the nobler and higher part of the body of the Realm, and are personally present in Parliament, and therefore need no representation. The Commons only represent a part of the lower or inferior part of the body of the People, which are the Free-holders worth 40s. by the year, and the Commons or Free-men of Cities and Burroughs, or the *major part* of them. All which are not one quarter, nay, not a tenth part of the Commons of the Kingdom; for in every Parish, for one Free-holder there may be found ten that are no Free-holders: and anciently before Rents were improved, there were nothing neerer so many Free-holders of 40s. by the year as now are to be found.

The scope and Conclusion of this discourse and Argument is, That the people taken in what notion or sense soever, either *diffusively*, *collectively*, or *representatively*, have not, nor cannot exercise any right or power of their own by nature, either in choosing or in regulating Kings. But whatsoever power any people doth lawfully exercise, it must receive it from a supream power on earth, and practice it with such limitations as that superior power shall appoint. To return to our Author.

He

He divides Monarchy into $\left\{ \begin{array}{l} \text{Absolute,} \\ \text{Limited.} \end{array} \right.$

Absolute Monarchy (saith he) is, when the P.6.
Sovereignty is so fully in one, that it hath no
limits or bounds under God but his own will. This
definition of his I embrace. And as before I charg-
ed our Author for not giving us a definition of
Monarchy in general, so I now note him for not
affording us any definition of any other particular
kind of Monarchy but onely of absolute: it may
peradventure make some doubt that there is no
other sort but only that which he calls *absolute*.

Concerning *absolute Monarchy*, he grants, that
such were the antient Eastern Monarchies, and that of the
Turk and Persian at this day. Herein he saith very true.
And we must remember him, though he do not men-
tion them, that the Monarchs of *Judah* and *Israel*
must be comprehended under the number of those he
calls the *Eastern Monarchies*: and truly if he had
said that all the antient Monarchies of the world
had been absolute, I should not have quarrelled at him,
nor do I know who could have disproved him.

Next it follows, that *Absolute Monarchy* is, when
a people are absolutely resigned up, or resign up them-
selves to be governed by the will of One man. Where
men put themselves into this utmost degree of subjection
by oath and contract, or are born and brought unto it
by Gods providence. In both these places he ac-
knowledgeth there may be other means of obtain-
ing a Monarchy, besides the contract of a Nation or
peoples resigning up themselves to be governed,
which is contrary to what he after saies,
that the sole mean or root of all Sovereignty, is P.12.
the consent and fundamental contract of a Na-
tion of men.

Morc-

Moreover, the Author determines, that *Absolute Monarchy* is a lawful government, and that men may be born and brought unto it by Gods providence; it binds them, and they must abide it, because an oath to a lawful thing is obligatory. This Position of his I approve, but his Reason doth not satisfie; for men are bound to obey a lawful Governour, though neither they nor their Ancestors ever took oath.

Then he proceeds, & confesseth that in *Rom.*

P.7. 13. *the power which then was, was Absolute: yet the Apostle not excluding it, calls it Gods ordinance, and commands subjection to it. So Christ commands Tribute to be paid, and pays it himself; yet it was an arbitrary tax, the production of an absolute power.* These are the loyal expressions of our Author touching *absolute* or *arbitrary* Monarchy. I do the rather mention these passages of our Author, because very many in these days do not stick to maintain, that an arbitrary or Absolute Monarch not limited by law, is all one with a Tyrant; and to be governed by one mans will, is to be made a slave. It is a question whether our Author be not of that minde, when he saith, *absolute subjection is servitude*: and thereupon a late friend to limited Monarchy affirms in a

P.54. discourse upon the question in debate between the King and Parliament, That *to make a King by the standard of Gods word, is to make the Subjects slaves for conscience sake.* A hard saying, and I doubt whether he that gives this censure can be excused from blasphemy. It is a bold speech, to condemn all the Kings of *Judah* for Tyrants, or to say all their Subjects were slaves. But

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certainly the man doth not know neither what a Tyrant is, or what a Slave is: indeed the words are frequent enough in every mans mouth, and our old English Translation of the Bible useth sometimes the word *Tyrant*; but the Authors of our new Translation have been so careful, as not once to use the word, but onely for the proper name of a man, *Act. 19. 9.* because they find no Hebrew word in the Scripture to signifie a *Tyrant* or a *Slave*. Neither *Aristotle*, *Bodin*, nor Sir *Walter Rawleigh*, (who were all men of deep judgement) can agree in a definition or description of *Tyranny*, though they have all three laboured in the point. And I make some question whether any man can possibly describe what a *Tyrant* is, and then tell me any one man that ever was in the world that was a *Tyrant* according to that description.

I return again to our Treatise of Monarchy, where I find three DEGREES of absolute Monarchy.

1. *Where the Monarch, whose will is the law, doth set himself no law to rule by, but by commands of his own judgement as he thinks fit.*

2. *When he sets a law by which he will ordinarily govern, reserving to himself a liberty to vary from it as oft as in his discretion he thinks FIT; and in this the Sovereign is as free as the former.*

3. *Where he not onely sets a rule, but promiseth in many cases not to alter it; but this promise or engagement is an after-condescent or act of grace, not dissolving the absolute Oath of subjection which went before it.*

For the first of these three, there is no question but it is a pure absolute Monarchy; but as for the

the other two, though he say *they be absolute*, yet in regard they set themselves limits or laws to govern by, if it please our Author to term them *limited Monarchs*, I will not oppose him; yet I must tell him, that his third degree of absolute Monarchy is such a kind, as I believe, never hath been, nor ever can be in the world. For a Monarch to promise and engage in many cases not to *alter a law*, it is most necessary that those many cases should be particularly expressed at the bargain making. Now he that understands the nature and condition of all *humane laws*, knows that particular cases are infinite, and not comprehensible within any rules or laws: and if many cases should be comprehended, and many omitted, yet even those that were comprehended would admit of variety of interpretations and disputations; therefore our Author doth not, nor can tell us of any such reserved cases promised by any Monarch.

Again, where he saith, *An after-condescend or Act of grace doth not dissolve the absolute Oath of subjection which went before it*; though in this he speak true, yet still he seems to insinuate, that an *Oath onely binds to subjection*, which Oath, as he would have us believe, was at first *arbitrary*: whereas Subjects are bound to obey Monarchs though they never *take oath of subjection*, as well as children are bound to obey their parents, though they never swear to do it.

Next, his distinction between *the rule of*
P.7. *power, and the exercise of it*, is vain; for to rule,
P.1. *is to exercise power*: for himself saith, that
Government is potestatis exercitium, the exercise of a moral power: Lastly,

Lastly, whereas our Author saith, *a Monarch cannot break his promise without sin*; let me add, that if the safety of the people, *salus populi*, require a breach of the Monarchs promise, then the sin, if there be any, is rather in the *making*, than *breaking of the promise*; the *safety of the people* is an exception implied in every Monarchical promise.

But it seems these three degrees of Monarchy do not satisfy our Author; he is not content to have a Monarch have a Law or rule to govern by, but he must have *this limitation or* P.12. *law to be ab externo, from somebody else, and not from the determination of the Monarchs own will*; and therefore he saith, *By original constitution the society publick confers on one man a power by limited contract, resigning themselves to be governed by such a Law*: also before he told us, *the* P.13. *sole means of Sovereignty is the consent and fundamental contract; which consent puts them in their power, which can be no more nor other than is conveyed to them by such contract of subjection*. If the sole means of a limited Monarchy be the consent and fundamental contract of a Nation, how is it that he saith, *A Monarch may be limited by after-condescence*? is an after-condescence *all one* with a fundamental contract, with original and radical constitution? why yea: he tells us *it is a secondary original constitution*, a secondary original, that is, *a second first*: And if that condescence be an act of grace, doth not this condescence to a limitation come from the free determination of the Monarchs will? If he either *formally, or virtually* (as our Author supposeth) *desert his absolute*

or arbitrary power which he hath by conquest, or other right.

And if it be from the free will of the Monarch, why doth he say the limitation must be *ab P.8. externo*? he told us before, that *subjection cannot be dissolved or lessen'd by an Act of grace coming afterwards*: but he hath better be- thought himself, and now he will have *acts of grace to be of two kinds, and the latter kind may amount* (as he saith) *to a resignation of absolute Monarchy*. But can any man believe that a Monarch who by conquest or other right hath an absolute arbitrary power, will voluntarily resigne that absoluteness, and accept so much power onely as the people shall please to give him, and such laws to govern by as they shall make choice of? can he shew that ever any Monarch was so gracious or kind-hearted as to lay down his lawful power freely at his Subjects feet? is it not sufficient grace if such an absolute Monarch be content to set down a Law to himself by which he will ordinarily govern, but he must needs relinquish his old independent commission, and take a new one from his Subjects, clog'd with limitations?

Finally, I observe, that howsoever our Author speak big of the radical, fundamental, and original power of the people as the root of all Sovereignty: yet in a better moode he will take up, and be contented with a Monarchy limited by an after-condescend and act of grace from the Monarch himself.

Thus I have briefly touched his grounds of *Limited Monarchy*; if now we shall ask, what proof or examples he hath to justify his doctrine, he

he is as mute as a fish: onely Pythagoras hath said it, and we must believe him; for though our Author would have Monarchy to be limited, yet he could be content his opinion should be absolute, and not limited to any rule or example.

The main Charge I have against our Author now remains to be discussed; and it is this, That instead of a Treatise of *Monarchy*, he hath brought forth a Treatise of *Anarchy*, and that by his own confessions shall be made good.

First, he holds, *A limited Monarch transcends his bounds if he commands beyond the law; and the Subject legally is not bound to subjection in such cases.*

Now if you ask the Author who shall be judge whether the Monarch transcend his bounds, and of the excesses of the sovereign power;

His answer is, *There is an impossibility of constituting a judge to determine this last controversy.* — *I conceive in a limited legal* P.16. P.17.

Monarchy there can be no stated internal Judge of the Monarchs actions, if there grow a fundamental variance betwixt him and the community. — There can be no Judge legal and constituted within that form of government. In these answers it appears, there is no Judge to determine the Sovereigns or the Monarchs transgressing his fundamental limits: yet our Author is very cautelous, and supposeth onely a fundamental variance betwixt the Monarch and the Community; he is ashamed to put the question home. I demand of him if there be a variance betwixt the Monarch and any of the meanest persons of the Community, who shall be the Judge? for instance, *The King commands me,*

or gives judgement against me : I reply, His commands are illegal, and his judgment not according to Law : who must judge ? if the Monarch himself judge, then you destroy the frame of the State, and make it absolute, saith our Author ; and he gives his reason : for, to define a Monarch to a Law, and then to make him judge of his own deviations from that Law, is to absolve him from all Law. On the other side, if any, or all the people may judge, then you put the Sovereignty in the whole body, or part of it, and destroy the being of Monarchy. Thus our Author hath caught himself in a plain dilemma : If the King be judge, then he is no limited Monarch ; If the people be judge, then he is no Monarch at all. So farewell limited Monarchy, nay farewell all government if there be no Judge.

Would you know what help our Author hath found out for this mischief ? First, he saith, P.14. that a Subject is bound to yield to a Magistrate, when he cannot, de jure, challenge obedience, if it be in a thing in which he can possibly without subversion, and in which his act may not be made a leading case, and so bring on a prescription against publick liberty : Again he saith,

P.17. If the act in which the exorbitance or transgression of the Monarch is supposed to be, be of lesser moment, and not striking at the very being of that Government, it ought to be born by publick patience, rather than to endanger the being of the State. The like words he uses in another

P.49. place, saying, If the will of the Monarch exceed the limits of the law, it ought to be submitted to, so it be not contrary to Gods Law, nor bring with it such an evil to our selves, or the publick

publick, that we cannot be accessory to it by obeying. These are but fig-leaves to cover the nakedness of our Authors limited Monarch, formed upon weak supposals in cases of lesser moment. For if the Monarch be to govern onely according to Law, no transgression of his can be of so small moment if he break the bounds of Law, but it is a subversion of the government it self, and may be made a leading case, and so bring on a prescription against publick liberty; it strikes at the very being of the Government, and brings with it such an evil, as the party that suffers, or the publick cannot be accessory to: let the case be never so small, yet if there be illegality in the act, it strikes at the very being of *limited Monarchy*, which is to be legal: unless our Author will say, as in effect he doth, That his limited Monarch must govern according to Law in great and publick matters onely, and that in smaller matters which concern private men, or poor persons, he may rule according to his own will.

Secondly, our Author tells us, *if the Monarchs act of exorbitancy or transgression be mortal, and such as suffered dissolves the frame of Government and publick liberty, then the illegality is to be set open, and redressment sought by petition; which if failing, prevention by resistance ought to be: and if it be apparent, and appeal be made to the consciences of mankind, then the fundamental Laws of that Monarchy must judge and pronounce the sentence in every mans conscience, and every man (so far as concerns him) must follow the evidence of Truth in his own soul to oppose or not to oppose, according as he can in conscience acquit or condemn the act of the governour or Monarch.*

P.17.

Whereas my Author requires, that the *destructive nature of illegal commands should be set open*: Surely his mind is, That each private man in his particular case should make a publick remonstrance to the world of the illegal act of the Monarch; and then if upon his Petition he cannot be relieved according to his desire, he ought, or it is his duty to make resistance. Here I would know, who can be the judge whether the illegality be made apparent? it is a main point, since every man is prone to flatter himself in his own cause, and to think it good, and that the wrong or injustice he suffers is apparent, when other moderate and indifferent men can discover no such thing: and in this case the judgement of the common people cannot be gathered or known by any possible means; or if it could, it were like to be various and erroneous.

Yet our Author will have *an appeal made to the conscience of all Man-kind*, and that being made, he concludes, *The fundamental Laws must judge, and pronounce sentence in every mans conscience.*

P.18. Whereas he saith, *The Fundamental Laws must judge*; I would very gladly learn of him, or of any other for him, what a Fundamental Law is, or else have but any one Law named me that any man can say is a Fundamental Law of the Monarchy. I confess he tells us, that

P.38. *the Common Laws are the foundation, and the Statute Laws are superstruative*; yet I think he dares not say that there is any one branch or part of the Common Law, but that it may be taken away by an act of Parliament: for many points of the Common Law (*de facto*) have, and
(*de*

(*de jure*) any point may be taken away. How can that be called Fundamental, which hath and may be removed, and yet the Statute-Laws stand firm and stable? It is contrary to the nature of Fundamental, for the building to stand when the foundation is taken away.

Besides, the Common Law is generally acknowledged to be nothing else but common usage or custome, which by length of time onely obtains authority: So that it follows in time after Government, but cannot go before it, and be the rule to Government, by any original or radical constitution.

Also the Common Law being unwritten, doubtful, and difficult, cannot but be an uncertain rule to govern by; which is against the nature of a rule, which is and ought to be certain.

Lastly, by making the common Law onely to be the foundation, *Magna Charta* is excluded from being a Fundamental Law, and also all other Statutes from being limitations to Monarchy, since the Fundamental Laws onely are to be judge.

Truly the conscience of all Man-kind is a pretty large Tribunal for the Fundamental Laws to pronounce sentence in. It is very much that Laws which in their own nature are dumb, and always need a Judge to pronounce sentence, should now be able to speak, and pronounce sentence themselves: such a sentence surely must be upon the hearing of one party onely; for it is impossible for a Monarch to make his defence and answer, and produce his witnesses, in every mans conscience, in each mans cause, who will but question the legality of the Monarchs Government. Certainly

tainly the sentence cannot but be unjust, where but one mans tale is heard. For all this, the conclusion is, *Every man must oppose or not oppose the Monarch according to his own conscience.* Thus at the last, every man is brought, by this Doctrine of our Authors, to be his own judge. And I also appeal to the consciences of all man-kind, whether the end of this be not utter confusion, and Anarchy.

Yet after all this, the Author saith, P.18. *This power of every mans judging the illegal acts of the Monarch, argues not a superiority of those who judge over him who is judged; and he gives a profound reason for it; his words are, It is not authoritative and civil, but moral, residing in reasonable creatures, and lawful for them to execute.* What our Author means by these words, (*not authoritative and civil, but moral*) perhaps I understand not, though I think I do; yet it serves my turn that he saith, that *resistance ought to be made, and every man must oppose or not oppose, according as in conscience he can acquit or condemn the acts of his Governour; for if it enable a man to resist and oppose his Governour, without question 'tis authoritative and civil.* Whereas he adds, that *moral judgment is residing in reasonable creatures, and lawful for them to execute;* he seems to imply, that authoritative, and civil judgement doth not reside in reasonable creatures, nor can be lawfully executed: Such a conclusion fits well with Anarchy; for he that takes away all Government, and leaves every man to his own conscience, and so makes him an independent in State, may well teach that authority resides not in reasonable creatures, nor can be lawfully executed.

I pass from his absolute and limited Monarchy, to his division or partition (for he allows no division) of Monarchy into *simple and mixed, viz. of a Monarch, the Nobility, and Community.*

Where first, observe a doubt of our Authors, *whether a firm union can be in a mixture* P.25. *of equality; he rather thinks there must be a priority of order in one of the three, or else there can be no unity.* He must know, that priority of order doth not hinder, but that there may be an equality of mixture, if the shares be equal; for he that hath the first share may have no more than the others: so that if he will have an inequality of mixture, a primity of share will not serve the turn: the first share must be greater or better than the others, or else they will be equal, and then he cannot call it a mixed Monarchy, where only a primity of share in the Supream power is in one: but by his own confession he may better call it a mixed Aristocracy or mixed Democracy, than a mixed Monarchy, since he tells us, *the Houses of* P.56. *Parliament sure have two parts of the greatest legislative authority; and if the King have but a third part, sure their shares are equal.*

The first step our Author makes, is this, *The sovereign power must be originally in all three; next he finds, that if there be an equality of shares in three Estates, there can be no ground to denominate a Monarch; and then his mixed Monarch might be thought but an empty title: Therefore in the third place he resolves us, that to save all, A* P.25. *power must be sought out wherewith the Monarch must be invested, which is not so great as to destroy the mixture, nor so titular as to destroy the*

Monarchy; and therefore he conceives it may be in these particulars.

First, *a Monarch in a mixed Monarchy*
 P.26. *may be said to be a Monarch* (as he conceives) *if he be the head and fountain of the power which governs and executes the established Laws;* that is, a man may be a Monarch, though he do but give power to others to govern and execute the established Laws: thus he brings his Monarch one step or peg lower still than he was before: at first he made us believe his Monarch should have the supreme power, which is the legislative; then he falls from that, and tells us, A limited Monarch must govern according to Law only; thus he is brought from the legislative to the gubernative or executive power only; nor doth he stay here, but is taken a hole lower, for now he must not govern, but *he must constitute Officers to govern by Laws;* if chusing Officers to govern be governing, then our Author will allow his Monarch to be a Governour, not else: and therefore he that divided *Supream power* into legislative and gubernative, doth now divide it into legislative, and *power of constituting Officers* for governing by Laws; and *this he saith is left to the Monarch.* Indeed you have left him a fair portion of power, but are we sure he may enjoy this? it seems our Author is not confident in this neither, and some others do deny it him: our Author speaking of the government of this Kingdome, saith, *The*
 P.38. *choice of the Officers is intrusted to the judgment of the Monarch for ought I know:* he is not resolute in the point; but for ought he knows, and for ought I know, his Monarch is

is but titular, an empty title, certain of no power at all.

The power of chusing Officers onely, is the basest of all powers. *Aristotle* (as I remember) saith, *The common people are fit for nothing but to chuse Officers, and to take accompts*: and indeed, in all popular governments the multitude perform this work: and this work in a King puts him below all his Subjects, and makes him the onely subject in a Kingdome, or the onely man that cannot Govern: there is not the poorest man of the multitude but is capable of some Office or other, and by that means may sometime or other perhaps govern according to the Laws; onely the King can be no Officer, but to chuse Officers; his Subjects may all Govern, but he may not.

Next, I cannot see how in true sence our Author can say, *his Monarch is the head and fountain of power*, since his doctrine is, that in a limited Monarchy, the publick society by original constitution confer on one man power: is not then the publick society the head and fountain of power, and not the King?

Again, when he tells us of his Monarch, that *both the other States, as well conjunctim as divisim, be his sworn subjects, and owe obedience to his commands*: he doth but flout his poor Monarch; for why are they called his Subjects and his Commons? he (without any complement) is their Subject; for they, as Officers, may govern and command according to Law: but he may not, for he must judge by his judges in Courts of Justice onely: that is, he may not judge or govern at all.

2. As

2. As for the second particular, *The sole or chief power in capacitating persons for the Supream power.* And

3. As to this third particular, *The power of convoking such persons*, they are both so far from making a Monarch, that they are the onely way to make him none, by choosing and calling others to share in the Supream power.

4. Lastly, concerning *his Authority being the last and greatest in the establishing every Act*, it makes him no Monarch, except he be sole that hath that Authority; neither his *primity* of share in the Supream power, nor *his Authority being last*, no, nor *his having the greatest Authority*, doth make him a Monarch, unless he have that Authority alone.

Besides, how can he shew that in his mixed Monarchy the Monarchs power is the greatest? The greatest share that our Author allows him in the Legislative power, is a Negative voice, and the like is allowed to the Nobility and Commons: And truly, a Negative voice is but a base term to express a Legislative power; a Negative voice is but a privative power, or indeed, no power at all to do any thing, onely a power to hinder an Act from being done.

Wherefore I conclude, not any of his four,
P.26. nor all of them put into one person, makes the State Monarchical.

This mixed Monarchy, just like the limited, ends in confusion and destruction of all Government: you shall hear the Authors confession, *That*
P.28. *one inconvenience must necessarily be in all mixed Governments, which I shewed to be in limited Governments; there can be no constituted legal Authoritative Judge of the Fundamental Controversies arising between the three Estates: If such do rise, it is the*

the fatal disease of those Governments, for which no salve can be applyed. It is a case beyond the possible provision of such a Government; of this question there is no legal judge. The accusing side must make it evident to every mans Conscience. — The appeal must be to the community, as if there were no Government; and as by evidence Consciences are convinced, they are bound to give their assistance. The wit of man cannot say more for Anarchy.

Thus have I picked out the flowers out of his Doctrine about limited Monarchy, and presented them with some brief Annotations; it were a tedious work to collect all the learned contradictions, and ambiguous expressions that occur in every page of his Platonick Monarchy; the Book hath so much of fancy, that it is a better piece of Poetry then Policy.

Because many may think, that the main Doctrine of *limited* and *mixed* Monarchy may in it self be most authentical, and grounded upon strong and evident reason, although our Author perhaps have failed in some of his expressions, and be liable to exceptions: Therefore I will be bold to enquire, whether *Aristotle* could find either reason or example, of a *limited* or *mixed* Monarchy; and the rather, because I find our Author altogether insists upon a rational way of justifying his opinion. No man I think will deny, but that *Aristotle* was sufficiently curious in searching out the several forms of Common-wealths and Kingdoms; yet I do not find, that he ever so much as dreamed of either a *limited* or *mixed* Monarchy. Several other sorts of Monarchies he reckons up: in the Third Book of his Politicks, he spends three whole Chapters

ters together, upon the several kinds of Monarchy.
First, in his fourteenth Chapter he mentions four kinds of Monarchy.

The Laconique or Lacedemonian.

The Barbarique.

The Æsymmetrical.

The Heroique.

The Laconique or Lacedemonian King, (saith he) had onely Supream power when he was out of the bounds of the Lacedemonian Territories; then he had absolute power, his Kingdom was like to a perpetual Lord General of an Army.

The Barbarique King (saith Aristotle) had a power very near to Tyranny; yet they were lawful and Paternal, because the Barbarians are of a more servile nature than the Grecians, and the Asiaticques than the Europeans; they do willingly, without repining, live under a Masterly Government; yet their Government is stable and safe, because they are Paternal and lawful Kingdoms, and their Guards are Royal and not Tyrannical: for Kings are guarded by their own Subjects, and Tyrants are guarded by Strangers.

The Æsymmetrical King (saith Arist.) in old time in Greece, was an Elective Tyrant, and differed onely from the Barbarian Kings, in that he was Elective and not Paternal; these sorts of Kings, because they were Tyrannical, were Masterly; but because they were over such as voluntarily Elec^ded them, they were Regal.

The Heroique were those (saith Aristotle) which flourished in the Heroical times, to whom the people did willingly obey; and they were Paternal and lawful, because these Kings did deserve well of the multitude,
either

either by teaching them Arts, or by Warring for them, or by gathering them together when they were dispersed, or by dividing Lands amongst them: these Kings had Supreme power in War, in Sacrifices, in Judicature.

These four sorts of Monarchy hath Aristotle thus distinguished, and after sums them up together, and concludes his Chapter as if he had forgot himself, and reckons up a fifth kind of Monarchy; which is, saith he, *When one alone hath Supream power of all the rest: for as there is a domestical Kingdom of one house, so the Kingdom of a City, or of one or many Nations, is a Family.*

These are all the sorts of Monarchy that Aristotle hath found out, and he hath strained hard to make them so many: first, for his Lacedemonian King, himself confesseth that he was but a kind of Military Commander in War, and so in effect no more a King than all Generals of Armies: And yet this No-king of his was not limited by any Law, nor mixed with any companions of his Government: when he was in the Wars out of the Confines of Lacedemon, he was, as Aristotle styles him, *Ἀντιβασιλεύς* of full and absolute command, no Law, no companion to govern his Army but his own will.

Next, for Aristotles *Æsymmetrical* King, it appears, he was out of date in Aristotles time, for he saith, he was amongst the antient Greeks, *ἐν τῷ ἀρχαίῳ ἔθνεϊ*. Aristotle might well have spared the naming him, (if he had not wanted other sorts) for the honour of his own Nation: for he that but now told us the Barbarians were of a more servile nature than the Grecians, comes here, and tells us, that these old Greek Kings were Elective Tyrants. The Barbarians did but suffer Tyrants in shew, but the old
Gre-

Grecians chose Tyrants indeed ; which then must we think were the greater slaves, the *Greeks* or the *Barbarians* ? Now if these sorts of Kings were Tyrants, we cannot suppose they were limited either by Law, or joyned with companions : Indeed *Arist.* saith, some of these Tyrants were limited to certain times and actions , for they had not all their power for term of life , nor could meddle but in certain businesses ; yet during the time they were Tyrants , and in the actions whereto they were limited , they had absolute power to do what they list according to their own will, or else they could not have been said to be Tyrants.

As for *Aristotles Heroick King* , he gives the like note upon him, that he did upon the *Æsymnet*, that he was in old time *ὁ τῆς ἡρωικῆς βασιλείας* in the Heroick times. The thing that made these Heroical Kingdoms differ from other sorts of Kingdoms, was only the means by which the first Kings obtained their Kingdoms , and not the manner of Government, for in that they were as absolute as other Kings were, without either limitation by Law, or mixture of companions.

Lastly, as for *Arist. Barbarick* sort of Kings, since he reckoned all the world *Barbarians* except the *Grecians*, his *Barbarick King* must extend to all other sorts of Kings in the world, besides those of *Greece*, and so may go under *Aristotles* fifth sort of Kings, which in general comprehends all other sorts , and is no special form of Monarchy.

Thus upon a true accompt it is evident, that the five several sorts of Kings mentioned by *Aristotle* , are at the most but different and accidental means of the first obtaining or holding of Monarchies,
and

and not real or essential differences of the manner of Government, which was always absolute, without either limitation or mixture.

I may be thought perhaps to mistake, or wrong Aristotle, in questioning his diversities of Kings; but it seems Aristotle himself was partly of the same mind; for in the very next Chapter, when he had better considered of the point, he confessed, that to speak the truth, there were almost but two sorts of Monarchies worth the considering, that is, his first or Lacedemonian sort, and his fifth or last sort, where one alone hath Supream power over all the rest: thus he hath brought his five sorts to two. Now for the first of these two, his Lacedemonian King, he hath confessed before, that he was no more than a Generalissimo of an Army, and so upon the matter no King at all: and then there remains onely his last sort of Kings, where one alone hath the Supream power. And this in substance is the final resolution of Aristotle himself: for in his sixteenth Chapter, where he delivers his last thoughts touching the kinds of Monarchy, he first dischargeth his Lacedemonian King from being any sort of Monarchy, and then gives us two exact rules about Monarchy; and both these are pointblank against limited and mixed Monarchy; therefore I shall propose them to be considered of, as concluding all Monarchy to be absolute and Arbitrary.

1. The one Rule is, that he that is said Arist. to be a King according to Law, is no sort pol. l. 3. of Government or Kingdom at all: *Ὁ ἐν νόμῳ* c. 16. βασιλεὺς οὐκ ἐστὶν οὐδὲ πολυτελής.

2. The second rule is, that a true King is he that ruleth all according to his own will, *καὶ τὸν αὐτοῦ βιάσθαι.*

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This latter frees a Monarch from the mixture of partners or sharers in Government, as the former rule doth from limitation by Laws.

Thus in brief I have traced *Aristotle* in his crabbed and broken passages, touching diversities of Kings; where he first finds but four sorts, and then he stumbles upon a fifth; and in the next Chapter contents himself onely with two sorts of Kings, but in the Chapter following concludes with one, which is the true perfect Monarch, who rules all by his own will: in all this we find nothing for a regulated or mixed Monarchy, but against it.

Moreover, whereas the Author of the Treatise of Monarchy affirms it as a prime principle, *That all Monarchies, (except that of the Jews) depend upon humane designment, when the consent of a society of men, and a fundamental contract of a Nation, by original or radical constitution confers power*; He must know that *Arist.* searching into the original of Government, shews himself in this point a better Divine than our Author; and as if he had studied the Book of *Genesis*, teacheth, That Monarchies fetch their Pedigree from the right of Fathers, and not from the gift or contract of people; his words may thus be Englished. *At the first, Cities were Governed by Kings, and so even to this day are Nations also: for such as were under Kingly Government did come together; for every House is governed by a King, who is the eldest; and so also Colonies are governed for kindred sake.* And immediately before, he tells us, *That the first society made of many Houses is a Village, which naturally seems to be a Colony of a House, which some call foster-brethren, or Children, and Childrens Children.* So

So in conclusion we have gained *Aristotles* judgment in three main and essential points.

1. *A King according to Law makes no kind of Government.*

2. *A King must rule according to his own will.*

3. *The Original of Kings, is from the right of Fatherhood.*

What *Aristotles* judgment was two thousand years since, is agreeable to the Doctrine of the great modern Politician *Bodin*: Hear him touching limited Monarchy: *Unto Majesty or Sovereignty* (saith he) *belongeth an absolute power, not subject to any Law* — Chief power given unto a Prince with condition, is not properly Sovereignty, or power absolute, except such conditions annexed to the Sovereignty, be directly comprehended within the Laws of God and Nature. — *Albeit by the sufferance of the King of England, controversies between the King and his people are sometimes determined by the high Court of Parliament, and sometimes by the Lord Chief Justice of England; yet all the Estates remain in full subjection to the King, who is no ways bound to follow their advice, neither to consent to their requests.* It is certain, that the Laws, Priviledges, and Grants of Princes, have no force but during their life, if they be not ratified by the express consent, or by sufferance of the Prince following, especially Priviledges. — *Much less should a Prince be bound unto the Laws he maketh himself; for a man may well receive a Law from another man, but impossible it is in nature for to give a Law unto himself, no more than it is to command a mans self in a matter depending of his own will.* The Law saith, *Nulla obligatio consistere potest, quæ à voluntate promittentis statim capit.* The Sovereign Prince may derogate unto

the Laws that he hath promised and sworn to keep, if the equity thereof be ceased; and that of himself, without the consent of his Subjects. — The Majesty of a true Sovereign Prince is to be known, when the Estates of all the people assembled, in all humility present their requests and supplications to their Prince, without having power in any thing, to command, determine, or give voice, but that that which it pleaseth the King to like or dislike, to command or bid, is holden for Law: wherein they which have written of the duty of Magistratus have deceived themselves, in maintaining that the power of the people is greater than the Prince; a thing which causeth oft true Subjects to revolt from their obedience to their Prince, and ministreth matter of great troubles in Common-wealths; of which their opinion there is neither reason nor ground: for if the King be subject unto the Assemblies and Decrees of the people, he should neither be King nor Sovereign, and the Common-wealth neither Realm nor Monarchy, but a mere Aristocracie. — So we see the principal point of Sovereign Majesty, and absolute power, to consist principally in giving Laws unto the Subjects in general without their consent. Bodin de Rep. l. 1. c. 8.

To confound the state of Monarchy with the Popular or Aristocratical estate, is a thing impossible, and in effect incompatible, and such as cannot be imagined: for Sovereignty being of it self indivisible, how can it at one and the same time be divided betwixt one Prince, the Nobility, and the people in common? The first mark of Sovereign Majesty, is to be of power to give Laws, and to command over them unto the Subjects; and who should those Subjects be, that should yield their obedience to the Law, if they should have also power to make the Laws? who should be that could give the Law?

being

being himself constrained to receive it of them, unto whom himself gave it? so that of necessity we must conclude, That as no one in particular hath the power to make the Law in such a State, that then the State must needs be a State popular.—Never any Commonwealth hath been made of an Aristocracy and popular Estate, much less of the three Estates of a Commonwealth.—Such States wherein the rights of Sovereignty are divided, are not rightly to be called Commonwealths, but rather the corruption of Commonwealths, as Herodotus has most briefly but truly written.—Commonwealths which change their state, the Sovereign right and power of them being divided, find no rest from Civil wars and broils, till they again recover some one of the three Forms, and the Sovereignty be wholly in one of the states or other. — Where the rights of the Sovereignty are divided betwixt the Prince and his Subjects, in that confusion of state there is still endless stir and quarrels for the superiority, until that some one, some few, or all together, have got the Sovereignty. Id. lib. 2. c. 1.

This Judgment of Bodin's touching Limited and Mixed Monarchy, is not according to the mind of our Author, nor yet of the Observator, who useth the strength of his Wit to overthrow Absolute and Arbitrary Government in this Kingdom; and yet in the main body of his discourse, lets fall such Truths from his pen, as give a deadly wound to the Cause he pleads for, if they be indifferently weighed and considered. I will not pick a line or two here and there to wrest against him, but will present a whole Page of his Book, or more together, that so we may have an entire prospect upon the Observators mind: *Without society* (saith the

Observer) men could not live; without Laws men could not be sociable; and without Authority somewhere to judge according to Law, Law was vain: It was soon therefore provided, that Laws according to the dictate of Reason, should be ratified by common consent; when it afterward appeared, that man was yet subject to unnatural destruction, by the Tyranny of entrusted Magistrates, a mischief almost as fatal, as to be without all Magistracy. How to provide a wholesome remedy therefore, was not so easie to be invented: it was not difficult to invent Laws for the limiting of Supream Governours; but to invent how those Laws should be executed, or by whom interpreted, was almost impossible, *Nam quis Custodiet ipsos Custodes*, to place a Superiour above a Supream, was held unnatural; yet what a lifeless thing would Law be without any Judge to determine and force it? If it be agreed upon, that limits should be prefixed to Princes and Judges to decree according to those limits, yet another inconvenience will presently affront us: for we cannot restrain Princes too far, but we shall disable them from some good: long it was ere the world could extricate it self out of all these extremities, or find out an orderly means whereby to avoid the danger of unbounded Prerogative on this hand, and to excessive liberty on the other; and scarce has long experience yet fully satisfied the minds of all men in it. In the Infancy of the world, when man was not so artificial and obdurate in cruelty and oppression as now, and Policy most rude, most Nations did choos rather to subject themselves to the meer discretion of their Lords, than rely upon any limits; and so be ruled by Arbitrary Edicts, than written Statutes. But since Tyranny being more exquisite, and Policy more perfect, especially where Learning and Religion flourish,

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few Nations will endure the thraldome which usually accompanies unbounded and unconditionate Royalty; Yet long it was ere the bounds and conditions of Supreme Lords was so wisely determined, or quietly conserved as now they are: for at first, when as Ephori, Tribuni, Curatores, &c. were erected to poise against the scale of Sovereignty, much blood was shed about them, and States were put into new broils by them, and some places the remedy proved worse than the disease. In all great distresses, the body of the people were ever constrained to rise, and by force of the major party to put an end to all intestine strifes, and make a redress of all publick grievances: But many times calamities grew to a strange height, before so cumbersome a body could be raised; and when it was raised, the motions of it were so distracted and irregular, that after much spoil and effusion of blood, sometimes only one Tyranny was exchanged for another, till some was invented to regulate the motions of the peoples moliminous body. I think Arbitrary rule was most safe for the World: but Now, since most Countries have found an art and peaceable order for publick Assemblies, whereby the people may assume its own power to do it self right, without disturbance to it self or injury to Princes, be is very unjust that will oppose this art or order. That Princes may not be Now beyond all limits and Laws, nor yet to be tyed upon those limits by any private parties; the whole Community, in its underived Majesty, shall convene to do justice; and that the Convention may not be without intelligence, certain times, and places, and forms, shall be appointed for its reglement; and that the vastness of its own bulk may not breed confusion, by vertue of election and representation, a few shall act for many, the wise shall consent for the simple,